



## **Issues in Resolving Cases of International Child Abduction**



**by Janet Chiancone, M.S.  
and  
Linda Girdner, Ph.D.**

**American Bar Association  
Center on Children and the Law  
Washington, DC**

**Under a Grant from the  
Office of Juvenile Justice and Delinquency Prevention,  
U.S. Department of Justice**

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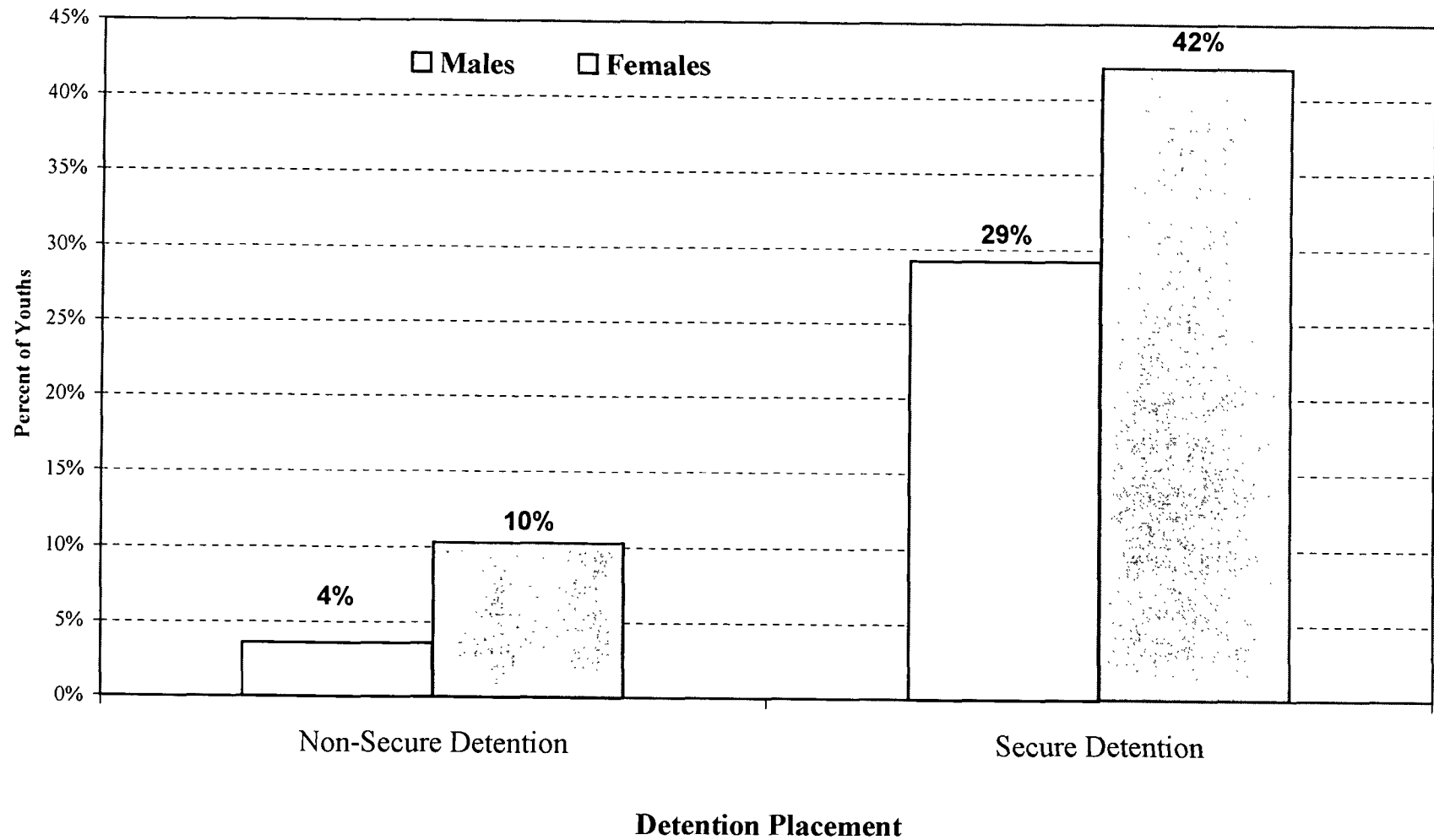
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**Figure 4. Percent of Male and Female Youths Placed in Non-Secure and Secure Detention  
Held Only on Basis of Domestic Violence Charge**









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## **RESEARCH SUMMARY**



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## ACKNOWLEDGMENTS

The research report on *Issues in Resolving Cases of International Child Abduction* is the result of a interdisciplinary effort by staff researchers, parental abduction experts, and parents. As the authors of the report, we are responsible for the content of our chapters. Findings from research are important to convey, even though not all findings will be comfortable or welcoming information to some readers.

We thank the parents who willingly participated in the focus groups and the survey of left-behind parents. Both endeavors were time-consuming commitments that involved opening up their own wounds to share their experiences. We greatly appreciate their contributions. We hope that their experiences will make the path less rocky for other parents in the future.

Three missing children's organizations were instrumental in assisting us with the sample for the left-behind parent survey: the National Center for Missing and Abducted Children (NCMEC), Vanished Children's Alliance (VCA) and Child Find of America, Inc. We are particularly thankful to Stacy Hunter and Kathy Free at NCMEC, Georgia Hilgeman and Jace Soper at VCA, and Cheryl Kane and Helen Millar at Child Find. Without this interorganizational collaboration we could not have carried out the left-behind parent survey.

The survey of Central Authorities under the Hague Convention would not have been possible without the tremendous help of Adair Dyer, now retired from the Hague Secretariat. The transmittal letter and up-to-date contact information for all the Central Authority offices that he offered enabled us to achieve a very high response rate. He also provided feedback on the draft of the survey instrument. Also, *merci* to Jean-Marc Neault and the staff of the Central Authority for the Province of Quebec for reviewing the draft of the survey instrument. Their comments helped us make the final instrument more user-friendly.

Central Authorities from around the world responded to our survey. We appreciate the effort they displayed in responding to the survey in such a thorough manner, despite it being in a foreign language for many of them. We hope that the findings and recommendations will be useful to them.

In Chapter 4, Patricia M. Hoff, legal consultant to the project, and Linda Girdner describe the "good practices" of many leading practitioners and organizations in the field of international child abduction. We are grateful to all of them for the gift of their time and expertise, which they so willingly shared for the benefit of others.

The project staff wishes to thank Patricia M. Hoff and the members of the project Advisory Board for their dedication and wise counsel. We learned from their different perspectives and expertise relating to international child abduction. Their comments on the draft instruments and products helped improve our work. The findings and recommendations, however, were not their responsibility.

We wish to thank all the administrative assistants and interns who worked on the project, especially Nefertari Johnson who had the task of putting the final product together.

The project director gratefully acknowledges the steadfast support and encouragement of the Director of the ABA Center on Children and the Law, Howard Davidson, and Associate Director Robert Horowitz. In addition, we are appreciative of the skills and talents of the Center's Marketing Director, Sally Small Inada, who facilitated the focus groups of left-behind parents.

Finally, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, which funded the study, has shown an ongoing commitment to missing children through its efforts to financially support research studies that lead to policy recommendations. Special thanks are due Ron Laney, Michael Medaris, and Eric Peterson.



# Issues in Resolving Cases of International Child Abduction

## RESEARCH SUMMARY

### The Abductor Most Likely to Succeed

The parent or family member who abducts a child to, or retains a child in, another country is the most successful of family abductors.<sup>1</sup> Parents who are left behind often are never reunited with their children, even when they know where the children are.

Who are the people who abduct their children to another country? What are the characteristics of these abductions? Was there any forewarning that the abductions would occur and were any attempts made to prevent the abduction? What barriers exist to resolving these difficult and troublesome cases? How well is the multinational treaty, the Hague Convention on the Civil Aspects of International Child Abduction, working to bring children back? What practices are engaged in by leading people in the field that others might adopt to overcome many of these barriers?

The American Bar Association Center on Children and the Law, with funding from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, carried out a research study to address these questions. We held focus groups of left-behind parents whose children were abducted to other countries. Then we developed a lengthy questionnaire, which 97 left-behind parents completed. Their responses provide an in-depth portrait of the problems faced by parents in these heart-wrenching cases. We also surveyed central authorities under the Hague Convention on the Civil Aspects of International Child Abduction to learn how this important multinational treaty was working to return children. Finally, we interviewed and reviewed materials from many leading practitioners and organizations in international child abduction to identify good practices that could be adopted by others. From these sources, we developed recommendations to help reduce the barriers to international child abduction.

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<sup>1</sup> The National Center for Missing and Exploited Children reported that 83.8% of all their family abduction cases between 1/1/90 and 6/30/98 resulted in the children being recovered. This is more than twice the recovery rate of international abductions as indicated by the left-behind parent survey, described in Chapter 2.

## The Experiences of Left-Behind Parents in International Abduction Cases

### Research Design

The American Bar Association Center on Children and the Law worked with three missing children's organization to identify the sample of left-behind parents for this study: The National Center on Missing and Exploited Children (NCMEC), located in Arlington, Virginia; Child Find of America, Incorporated, located in New Paltz, New York; and Vanished Children's Alliance, located in San Jose, California. These three organizations, which maintain caseloads of both domestic and international parental abductions, agreed to participate in locating parents to participate in the study.

The three missing children's organizations reviewed their international parental abduction case files and identified cases of international family abduction or retention which were open ("active") at any point between 1/1/90 and 12/31/94. A sample of left-behind parents in 154 cases were mailed a questionnaire. Ninety-seven responded. This reflects a response rate of 63 percent, a high response rate, especially considering the length of the questionnaire (33 pages). Based on the case information available, there were no significant differences between those that responded and those who did not. Therefore, one can consider these findings as representative of left-behind parents in the U.S. whose children were abducted to or retained in another country in the early 1990's.

### Findings

**Abductors generally had ties to the country of destination and differed from the left-behind parent in background, education, and employment. Mothers and fathers in their thirties with young children were the most common abductors.**

- Most left-behind parents reported that abductors had connections to the country to which the child was abducted. Eighty-three percent (73 cases) reported that the abductor spoke the language of the country. Other connections included having family in the country (76.1%), living in the country as a child (69.3%), and growing up mainly in that country (68.2%).
- Most abductors and left-behind parents differed in nationality (83.1%), ethnicity (68.8%), and religion (58.4%). Over 40% were of different races.
- Over 60% of abductors were citizens of another country, whereas just over 20% were only U.S. citizens. Over 15% held dual citizenship.



- Mothers and fathers were equally likely to be abductors, although patterns differed as to destination. Mothers were more likely to abduct to Latin America, whereas fathers were more likely to abduct to the Middle East. Europe was a common destination for both. These differences reflected the patterns of intermarriage.
- Over half of the abductors were in their 30's and about 30% were in their 20's.
- The educational attainments of half of the abductors were a high school degree, its equivalency, or some college credits. Left-behind parents were generally more educated than their abducting spouses.
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- Almost three-quarters of abductors earned less than \$25,000 per year prior to the abduction, including 20% having had no income. Generally, left-behind parents were more gainfully employed than their abducting spouses.
- Abducted children were equally as likely to be boys and girls. The median (average) age was five and a half years old.

**Forty-six countries were listed as abduction destinations.**

- Nearly one-third were to Latin American countries.
- Europe was the destination for 21% of abductions.
- A quarter of the abductions were to Muslim countries.
- One-third of abductions were to countries which were parties to the Hague Convention on the Civil Aspects of International Child Abduction at the time of the abduction.

**The number of children recovered was low.**

- Less than half of the children (41%) had been recovered.
- About 70% of children had been located (25% of parents reported that the child's location had always been known).

**Recovery and length of separation appear to be linked.**

- Cases where there was a recovery reported significantly shorter separation than in non-recovered cases.
- Half of recovered cases were separated less than 1 year.
- Nearly half of the non-recovered cases reported being separated for over 5 years.
- The length of separation in abductions to Hague countries was significantly shorter than those to non-Hague countries.

**Parents encountered six primary obstacles in the search and recovery of their children.**

- Lack of sufficient funds.
- Laws of other countries.
- Ease of exiting the U.S.
- Lax attitude of law enforcement agencies.
- Judges' lack of experience in international abduction cases.
- Difficulty working with government agencies and officials in foreign countries.

**Planning was indicated in a great number of abductions.**

- Nearly half of abductions occurred during a court-ordered visitation.
- ■ 80% of abductors received assistance from family members in carrying out the abduction or making it successful.
- One-fifth of cases reported the child was moved by the abductor from country to country following the abduction.

**The timing of the abduction was unpredictable.**

- 20% of left-behind parents and abductors were living together in the same household at the time of the abduction.
- 40% of abductions occurred within the first year of living apart.
- 20% of abductions occurred after more than 3 years of living apart.

**Abductors made a number of threats prior to the abduction.**

- 80% threatened that the left-behind parent would never see their child again.
- 60% of abductors threatened the life of the left-behind parent.
- More than 20% of abductors threatened the life of the abducted child.

**Left-behind parents reported high levels of dissatisfaction with law enforcement's initial response to the abduction.**

- More than 80% of parents contacted law enforcement within 24 hours of the abduction.
- 60% contacted the police within two hours of their first concern about the child's whereabouts.

- Two-thirds of parents received little to no assistance from the law enforcement official they first spoke with regarding the abduction.
- Examples of the poor response included being told that the child had to be missing for a prescribed period of time before they could take action, or that the police could not do anything unless there was evidence the child had left the state.
- In some cases, the lack of initial law enforcement response may have enabled the abduction to be successful.

**Parents feel strongly about U.S. passport and departure laws.**

- Two-thirds of parents listed the “ease of exiting the U.S.” as an obstacle to the recovery of their abducted children. Over half considered it one of the major obstacles.
- 22% of parents recommended that the U.S. require both parents’ permission for passport issuance and/or foreign travel for a minor child.

**Parental abduction is still widely regarded as a private family matter.**

- More than two-thirds of the left-behind parents reported encountering individuals and organizations which they perceived as regarding parental abduction as a family problem, not requiring legal or law enforcement intervention.
- One-third of parents reported that law enforcement would not take information about their case because they saw the abduction as a domestic situation.

**Left-behind parents pay a high price, both financially and emotionally, in cases of international abduction.**

- Left-behind parents spent, on average, \$33,500 in the search and recovery of their children.
- About a quarter of left-behind parents who reported on costs spent \$75,000 or more.
- Those with higher incomes generally spent more money, but more than half of parents across all income brackets reported spending as much as or more than their annual income.
- 85% of parents turned to family and friends for emotional support.
- 43% relied on professional counselors or therapists.

- One-fifth report using prescription drugs to cope with the stress of the abduction.
- Many parents reported a desire to establish stronger support systems and networking opportunities to work with other parents who are victims of family abduction.

### Conclusions

International abductions are most often carried out by mothers and fathers in their twenties and thirties with young children who have strong ties to the country to which the child is abducted and have few economic ties to the community that they leave.

Most alarming is that about 60% of children who are abducted from or retained outside of the U.S. are not returned, even though their whereabouts are often known. Many parents were concerned in advance that the other parent might abduct the child and requested preventive measures. Judges, all too often, did little or nothing to order preventive measures. Parents, coming from all walks of life, often had to be the ones educating or prompting the practitioners about how to proceed in their case. The emotional and financial toll on these parents was considerable. Combined with seeing little progress in their case and grieving over their missing child, many expressed feelings of despair and disappointment in their community and government.

## The Central Authority Survey

### Research Design

The American Bar Association Center on Children and the Law conducted a survey of central authorities regarding their experiences handling cases of international parental abduction under the Hague Convention on the Civil Aspects of International Child Abduction. The objective of the survey was to identify the similarities and differences in structure and operation of central authorities and to assess the degree to which the Hague Convention is working across countries.

The questionnaire collected data regarding:

- infrastructure of the central authority (staffing, procedures, government agency affiliations);
- number of cases and countries most often dealt with;
- legal representation of left-behind parents;
- the Hague application process (what services the central authority will perform, directly and indirectly; timing of central authority response);
- rejection of Hague applications;
- Hague hearings/proceedings;
- Hague decisions and return order enforcement;
- undertakings;
- follow-up (e.g., tracking custody case after return).

In all, 57 central authorities were contacted to participate in the study, representing all central authorities existing at that time. This included central authorities in 42 countries, as well as 10 provincial or territorial central authorities in Canada, and three central authorities in the United Kingdom (England/Wales, Scotland, and Northern Ireland).

A total of 44 central authorities responded to the survey, representing an excellent response rate of 77.1% of all central authorities existing at that time. Central authorities of 32 countries, including the Canadian federal central authority, ten provincial or territorial central authorities from Canada, and all three central authorities from the United Kingdom (England/Wales, Scotland, and Northern Ireland) completed and returned the survey. The response rate by country was 76.1%.

### Findings

- About half of the petitions for the return of a child under the Hague result in a court order to return the child. Countries vary greatly, with a range of return orders by country of between 5% and 95% of cases.
- Just under three-quarters of responding central authorities take steps to ensure that the abducting parent does not flee subsequent to the order for return. Seven central authorities reported that all children that were ordered returned were successfully returned, while one central authority reported that in more than a quarter of cases with return orders the child was not returned.
- Central authorities reported that abducting parents sometimes obstruct the order by fleeing with the child, sending the child into hiding, or filing documents to block the return.
- Over one-third of the central authorities were established within the last five years.
- More than two-thirds of central authorities are located in justice departments or ministries.
- About two-thirds of central authorities have attorneys on staff.
- Central authority staffs are small (about 3 persons) and generally spend less than half of their time on Hague cases.
- Caseloads vary greatly across central authorities. In 1994, outgoing applications ranged from one to 380 cases with a mean of 45 and median of 13.
- The United States was identified most often by central authorities as one of the three most frequently dealt with countries in both incoming and outgoing return and access (visitation) cases. The United Kingdom was next in all categories except outgoing access cases.

- More than 80% of responding countries will accept Hague applications in English and about half that number will accept applications in French. Only eleven central authorities reported accepting applications in English and French, although both are official languages of the Hague Convention.
- Twenty-three central authorities reported that their Hague return application form contains all of the elements found in Article 8 of the Hague Convention.
- Seven central authorities reported that they do not accept applications by facsimile.
- More than 70% of responding central authorities reported that they review incoming return applications within one week and more than 80% review outgoing return applications within one week.
- More than 70% of responding central authorities open five or fewer incoming return cases and five or fewer outgoing return cases per month. The number of unresolved cases ranges greatly.
- Five central authorities reported that the exact location of the child is unknown in over half of their incoming cases.
- Over two-thirds of responding central authorities reported that criminal charges are sometimes helpful in efforts to locate the child, while one-third reported that criminal charges are sometimes helpful to proceeding with the Hague case.
- Four central authorities reported that some judges in their country will not order a return if criminal charges are outstanding, with one central authority indicating the criminal charges must be dropped before that central authority can proceed with the case.
- Central authorities vary in their rate of rejecting applications, although the average rate of rejection is low. Over a quarter of responding central authorities reported rejecting applications in cases in which the time between the abduction or retention and the submission of the return application was too long. Almost one half have rejected applications when there is no evidence that the child is in the country.
- More than one quarter of the responding countries have other intercountry agreements or laws that may be used in lieu of the Hague Convention. Some report that these have simpler procedures than the Hague or are more advantageous in access cases.
- Eighteen central authorities reported trying to secure voluntary returns. About one quarter of these reported no success; almost three-quarters reported success in 25% or fewer cases.

- Ten central authorities reported that the central authority office will represent the parent in the Hague proceeding and 17 reported referring applicant parents to attorneys.
- Seventeen central authorities reported that Hague applicants may be eligible for free legal assistance and representation.
- The majority of central authorities (26) reported that the Hague proceeding is a hearing before a judge in their country, whereas three central authorities reported that it was an administrative proceeding.
- Five central authorities reported that judges generally make decisions in Hague cases within one week of the proceedings, 16 reported that decisions are made within six weeks, and two central authorities reported that, after the Hague proceedings, the decisions take a year or more.
- More than 60% of responding central authorities reported that judges may specify the terms or conditions for the return. They fall into two categories: terms and conditions which require specified behavior in the country to which the child was taken or retained, and terms and conditions which purport to govern behavior in the country of habitual residence once the child is returned. The latter have come to be known as “undertakings.” Undertakings often take the form of stipulations or consent orders and are ordered in connection with Hague return orders.
- Most undertakings relate to the placement of the child in protective custody or foster care pending the custody hearing in the country of habitual residence, and to the provision of transportation and/or lodging for the abducting parent. The main reasons for issuing undertakings were concerns about child abuse, spouse abuse, and the economic disparity of the parties.

## Conclusions

The broad ranges in outcomes across Hague countries and the variations in central authority procedures reflect a problematic lack of uniformity in the application of the Hague Convention across countries. This has the potential of eroding the spirit of reciprocity upon which the treaty is based and raises serious concerns about the Hague Convention's efficacy as a multinational treaty.

Because far more children are abducted to and from the U.S. than any other country, it is critically important that the Hague Convention work in an expeditious and proper manner in incoming and outgoing cases involving the United States. Although recent changes appear to be positive, some of them are piecemeal and insufficient as long term strategies for improvement.



## Selected Good Practices in International Child Abduction Cases

Several organizations and individuals playing a leading role in international child abduction cases were asked to identify some of their practices.

### National Center for Missing and Exploited Children

- NCMEC's state-of-the-art technology is revolutionizing the search for missing children.
- Incoming Hague petitions get immediate response: efforts are begun promptly to locate the child and find a pro bono attorney, and to educate judges and lawyers about the Convention.
- Criminal warrants can be very effective in Hague and non-Hague cases.
- As part of a transborder task force, NCMEC is working with Canadian counterparts to develop an intercept program for Canadian children transiting through the U.S. who are at risk of further abduction.
- Educating parents, lawyers, and judges on abduction prevention measures is a priority.
- NCMEC's institutional philosophy -- to go the extra mile to recover a missing child -- is reflected in the staff's cooperative approach to cases.
- Effective interaction between NCMEC and local, state, federal and international law enforcement officers and prosecutors helps find and recover abducted children.

### Vanished Children's Alliance

- Really listen and give support to left-behind parents on a long-term basis, including preparing them for reunification.
- Give parents some control over their lives by encouraging their active involvement in resolving their cases.
- Once a case is registered, become actively involved in trying to locate the abducted child, including coordinating closely with law enforcement in a positive, non-confrontational manner.
- Acting as the left-behind parent's liaison, get all the key players (law enforcement, nonprofit organizations, NCMEC, State Department, etc.) to work together and share pertinent case information.

- Help prevent abductions by (1) talking a parent out of a threatened abduction; (2) contacting law enforcement to alert them to potential abduction; and (3) suggesting various provisions that can be included in the court order, and other steps a parent can take to stop an abduction before it happens.

#### New York State Missing and Exploited Children's Clearinghouse

- Take abduction prevention seriously.
- Listen, seek to understand, and don't make biased judgments.
- Provide information and educate other practitioners.
- Promptly enter children in NCIC and investigate whereabouts.
- Coordinate case efforts with law enforcement and other agencies.
- Facilitate community-based education and prevention.
- Act as state contact for the U.S. Central Authority in Hague Convention cases.

#### Investigator, Child Abduction Unit, Kern County (CA) District Attorney's Office

- Have an agency protocol for handling family abduction cases.
- Quick response by law enforcement to family abductions may lead to early intervention and return of the child.
- Criminal warrants may be needed if the Hague Convention remedy fails or is unavailable.
- Law enforcement recovery of abducted children has numerous advantages over self-help recovery by the parent.

#### Deputy District Attorney and the District Attorney Investigator, Santa Clara County (CA) District Attorney's Office

- It is very important for the prosecuting attorney and the investigator to strategize on child abduction cases.
- Time is of the essence in abduction cases: law enforcement should act immediately to prevent removal of the child from the country and should utilize all available government resources toward that end.

- Parents can help prevent and resolve abduction cases by (1) obtaining specific preventive measures in their custody orders; (2) keeping a certified copy of the custody order with them at all times; (3) keeping information about the child and other parent as well as a certified copy of the court order in a safe place; and (4) flagging passports.
- U.S. and foreign consulates may be of assistance to the investigator when a child has been abducted abroad or there is reason to fear an abduction will occur.
- Law enforcement, judges, members of the bar and the public need to be educated about parental kidnapping.

#### District Attorney's Office in San Diego County (CA) and California State Attorney General's Office

- Streamline the Hague application process.
- Involve country experts on staff.
- Arrange for immediate hearing in Hague and custody cases.
- Create opportunities for cross-cultural judicial communication and training.

#### Lawyers

- Lawyers and judges should take advantage of the extensive collection of materials about the Hague Child Abduction Convention and the Uniform Child Custody Jurisdiction Act/Parental Kidnapping Prevention Act on Mr. Hilton's Internet site: <http://www.hiltonhouse.com>.
- In drafting an order for enforcement of custody and visitation, include provisions to deter international abductions, and to facilitate application for return or access under the Hague Child Abduction Convention should that become necessary.
- "Safe harbor" orders may be sought in the child's country of habitual residence to give the requested court some assurance that the child will not be exposed to harmful conditions if the child is ordered returned.
- In practice, the left-behind parent's presence at a Hague return proceeding, which should not be necessary, probably helps immensely in getting the judge to order the child returned.
- Counsel the client to hand carry all of the photographs, affidavits, and other legal documents pertinent to the case.

- If an attorney is not admitted in a court, he or she should not file a Hague petition there unless and until admitted, or simultaneously with a motion by a lawyer admitted to practice in that court which asks that the attorney be admitted *pro hoc vice*.
- If it is likely that the judge will have little or no experience with the International Child Abduction Remedies Act (ICARA) and the Hague Convention on the Civil Aspects of International Child Abduction, an attorney should provide immediate access to this fundamental information.
- When representing a parent in the United States, the attorney must anticipate international enforcement issues, particularly when faced with the prospect of having to enforce the U.S. court order in a country that is not a party to the Hague Child Abduction Convention.

#### Judges

- Courts must narrowly construe the Hague Convention “grave risk” defense.
- Courts should reject a “grave risk” defense based on interruption of the bonding process absent unusual circumstances.
- Do not follow the court’s broad interpretation of the grave risk defense in Steffen F. v. Severina P., 966 F. Supp. 922 (D. Ariz. 1997).
- Use undertakings or other creative solutions to return a child without necessarily separating him or her from an abducting parent who is the primary caretaker.

#### U.S. Central Authority, Office of Children’s Issues, U.S. Department of State

- Promote prevention measures to deter international abductions.
- Communicate information about the Hague Child Abduction Convention to American courts.
- Following an outgoing abduction, suggest that parents first seek voluntary return, then civil legal action and criminal extradition.
- Systematically encourage other countries to ratify the Hague Child Abduction Convention.
- Involved in ongoing effort to improve interagency cooperation and responsiveness to families affected by international abductions.

- Disseminate information to help parents when there is a risk of abduction and when an international abduction has already occurred.
- Maintain computerized databases to analyze case dispositions and facilitate follow-up with parents and foreign central authorities.

#### United Kingdom's Lord Chancellor's Child Abduction Unit

- A small, single central authority situated in an organization which represents children in legal proceedings.
- Legal representation immediately available to the overseas applicant at no cost.
- All cases presented in London by a small group of experienced solicitors and barristers.
- All cases heard by one of the judges of the High Court's Family Division, of whom there are now 17, including the President of the Family Division.
- Cases listed for hearing are heard very quickly. The rules limiting adjournments are to no more than twenty-one days.
- A summary hearing at which oral evidence is taken is positively discouraged.

#### Missing Children's Registry, Royal Canadian Mounted Police, Canada

- Monitor points of arrival and departure.
- Promptly enter the child in CPIC and NCIC.
- Coordinate with other agencies in both countries.
- Coordinate with central authorities on location of child.
- Promote communication with nonprofit organizations.
- Get support from airline industry.
- Use diplomatic pressure in non-Hague cases.

## Conclusions

Many of the good practices identified in the research report could be adopted by other practitioners and organizations, thereby raising the level of practice in international child abduction cases. Countries can also benefit from the exchange of ideas and practices.

Prevention of abductions is clearly identified as an area of practice needing greater emphasis. Interagency and often intercountry collaboration is essential in carrying out effective case management.

### Conclusions and Recommendations

The international abductor is the abductor most likely to succeed. Although the Hague Convention on the Civil Aspects of International Abduction was implemented to address this problem, it has met with varying success across party countries. Prevention is critical to make sure that more children do not spend their childhood's separated from their other parent and the country from which they were unilaterally removed.

#### **Judges Should Order Preventive Measures Routinely and Vary More Restrictive Measures Depending on the Level of Risk and the Likelihood of Recovery**

Specific recommendations to judges regarding prevention include:

- Specify removal restrictions of the child from the state or country without authorization in the custody order.
- Prevent issuance of the child's passport or require that the parent's and child's passports be surrendered.
- Order the at-risk parent to post a bond which would be released to the left-behind parent in the event of an abduction.
- Order supervised visitation and/or no overnights with the child to reduce flight risk.
- Condition visitation or travel with the child to another country on the at-risk parent obtaining a “mirror” order from the foreign court, enforceable in that country, which parallels the provisions of the U.S. order.
- Order the parents to counseling or mediation with someone who can help them address, in a culturally sensitive way, the issues raised by the ending of their marriage, their child’s mixed cultural heritage, and how to parent from two households, perhaps at great distances from one another.

## Professionals Handling Parental Abduction Cases Should Receive Further Training

Specific education and training recommendations include:

- Training for law enforcement and prosecutors regarding *immediate* action required to be taken in cases of suspected international child abduction (e.g., entry into NCIC, U.F.A.P. warrant issuance, Hague application, contacting State Missing Children's Clearinghouse). This should include training to all "front line" personnel, including patrol officers, support staff and investigators.
- Training for judges and attorneys regarding preventive measures which can be taken in cases where parental abduction is feared (e.g., supervised visitation, bonds), and guidelines to encourage issuing prompt and enforceable custody and visitation orders and include warnings that violation of the order may be a criminal offense and punishable by imprisonment.
- Judicial training in all Hague countries regarding the implementation of the Hague Convention on the Civil Aspects of International Child Abduction, as well as other inter-country agreements regarding child custody.

Also recommended is in-depth training for all professionals which highlights:

- the widespread nature of the problem of parental abduction;
- the specific difficulties faced in recovering children in cases of international abduction;
- the devastating impact that the abduction can have on the child; and
- maintaining supportive contact with left-behind parents.
- Professionals who could benefit from training include law enforcement and prosecutors (local, state and federal), attorneys, judges, government agency personnel (schools, child protective services, missing children's clearinghouses, U.S. Department of State, U.S. Immigration and Naturalization Service, U.S. Customs), family service and missing children's organizations.
- Where possible, training curricula should incorporate the experiences of left-behind parents, both as writers and presenters.



## **Changes Should be Made to Improve the Efficacy of the Hague Convention on the Civil Aspects of International Child Abduction across Countries**

Recommendations include the following:

- Issues relating to the lack of efficacy and uniformity should be raised at the next special meeting of party countries at the Hague.
- A multinational nongovernmental group, including parents, attorneys, researchers, and missing children's organizations, should be convened to discuss problems with the Hague Convention and how to overcome them.<sup>2</sup>
- Two-thirds of Central Authorities are located in Departments of Justice and have at least one attorney on staff. Other countries should consider this model.
- Current efforts to educate attorneys and judges and to recruit pro bono attorneys in the U.S. are piecemeal solutions without long-term benefits. The U.S. should consolidate Hague proceedings in one location before a knowledgeable judiciary with representation provided to left-behind parents by an experienced panel of attorneys, similar to the United Kingdom model. Alternatively, United States attorneys (i.e., federal prosecutors) could be authorized to file Hague return petitions in federal courts. These changes would expedite Hague proceedings, result in more uniform decision making, and increase the prompt return of children abducted to or retained in the U.S.
- Other countries should consider similar models to the United Kingdom's. Consolidating cases in a centralized location can help prevent local bias and allow decisions to be made by judges with experience in Hague cases. This will also alleviate the problem of Hague cases being treated as custody cases by inexperienced local judges.

**The U.S. Department of State, Office of Children's Issues should do a better job in assisting left-behind parents to bring abducted children home from both Hague and non-Hague countries.**

Dissatisfaction with the performance of the U.S. Department of State, Office of Children's Issues was expressed by many left-behind parents as well as a number of professionals in the field of missing children. Many of their complaints related to the functioning of the office. Recommendations that may improve performance include:

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<sup>2</sup> This idea originated with Lady Catherine Meyer and is being implemented by her in cooperation with the National Center for Missing and Exploited Children. The first meeting is planned for September 15-16, 1998 in Washington, D.C.

- Make the Director of the Office of Children's Issues a nonrotating foreign or civil service position rather than a rotating position. With a new director every two years there is a high learning curve and a small window of opportunity to advocate for the resources needed for the office and to make the changes in staff responsibilities necessary for improving performance.<sup>3</sup>
- Increase the number of personnel<sup>4</sup> to ensure a better staff-to-case ratio; train staff to be more pro-active in cases; provide more direct access for parents to caseworkers (less voice mail); and institute procedures requiring increased periodic contact (initiated by State Department personnel) between staff and the left-behind parent. Consider inviting former left-behind parents to brief staff on the type of contact that would be helpful.
- Serious consideration should be given to transferring the full responsibilities of the U.S. Central Authority under the Hague Convention to the U.S. Department of Justice. This would be in line with the majority of other Central Authorities. The U.S. Department of Justice could allocate direct case management of both incoming and outgoing cases (Hague and Non-Hague) to the National Center for Missing and Exploited Children (NCMEC), as the State Department currently does with incoming Hague cases. Such a change would result in a more child-focused advocacy approach which would be consistent with the mission of the Missing Children's Program in the U.S. Department of Justice and NCMEC, but which sometimes appears inconsistent with State Department's diplomatic mission.
- Make efforts to recruit foreign diplomatic personnel (from foreign embassies in Washington, D.C.) to serve on an informal "working group" committed to overcoming barriers which prevent the resolution of these cases and encourage foreign-based U.S. diplomats to establish similar informal groups in other countries, especially those with high numbers of abductions from or to the United States;
- Continue efforts to increase the number of party countries to the Hague Convention on the Civil Aspects of International Child Abduction.
- Be more willing to use diplomatic pressure or extradition to resolve abduction cases, particularly in non-Hague cases and Hague cases from countries from which there are few returns.

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<sup>3</sup> This is not a criticism of any individual director. Each has worked hard to make headway during their term. It is the structure of the position and its short-term nature that works as a barrier to greater progress.

<sup>4</sup> More hiring of staff is expected, due to the expansion of responsibilities of the U.S. Central Authority once the Hague Convention on Intercountry Adoption is enacted. It is not known, however, how this will impact the attention given to parental abduction cases.

- Parents should be better assisted in finding low-cost translation services for the documents accompanying their Hague application or foreign court proceeding.

### **Parents Should Have Access to Affordable Attorneys and Advocates**

The cost of attorneys (both in the U.S. and in foreign countries) was extremely high for most parents. Very few had access to free legal assistance, either in the U.S. or the foreign country. Recommendations include:

- Establish or expand pro bono and legal services programs for parents in cases of international child abduction;
- Use volunteers from Court Appointed Special Advocate (CASA) programs (or similar child advocacy programs) to work with state clearinghouses and nonprofit organizations to assist left-behind parent in accessing services and communicating with law enforcement, prosecutors and others. These volunteer advocates would also work to ensure services for the child after reunification.
- Continue support of the existing International Child Abduction Attorney Network (ICAAN), but expand its membership to attorneys in other countries, so that parents in both incoming and outgoing cases can receive pro bono or low cost legal representation.

### **Cooperation Across Agencies and Borders Should be Increased**

The return of a child in a case of international parental abduction requires a high level of cooperation among different government agencies and organizations (police, courts, social services, foreign relations), as well as among different governments themselves. To enhance this cooperation, the following efforts should be continued or considered:

- Enhance the inter-agency cooperative effort among those agencies frequently involved in cases of international child abduction. Currently, an International Parental Abduction Subcommittee Task Force exists with representatives from the Department of Justice (Criminal Division, Office of International Affairs; Immigration and Naturalization Service; Executive Office of the U.S. Attorneys; INTERPOL; OJJDP; FBI (including Legates, Special Investigations and Initiatives Unit); Department of State (Office of Children's Issues; Overseas Citizens Services; Legal Adviser-L/LEI); and Department of Treasury (U.S. Customs). This task force is responsible for identifying problems and working toward solutions.

- Arrange for certain state offices that are working well with neighboring countries to be the designated agency to handle all cases with that country.<sup>5</sup> This would centralize knowledge and expertise, build on existing relationships with foreign counterparts, and more efficiently secure the return of children to and from those countries. The California Deputy Attorney General's Office in San Diego (see Chapter 4, pages 29-33) could be assigned cases between the U.S. and Mexico and the New York State Missing and Exploited Children's Clearinghouse (see Chapter 4, pages 14-19) could handle cases between the U.S. and Canada. Such an expansion of caseload would also require commensurate funding increases.

### **Some Existing Laws and Procedures Should be Changed**

A number of current regulations create obstacles which make the location and recovery of abducted children very difficult, and in some cases make the abduction easier to accomplish. Changes which are recommended to these current laws include:

- Revision of existing U.S. departure regulations to require that adults accompanying minors exiting the country must show proof of permission from all parents or guardians; or a valid court order indicating that they alone can give permission.
- Changes in current rules regarding issuance of passports to minors to require that all parents or guardians give permission, unless a current court order specifies that permission of only one parent is required.

### **Support Groups and Networking Opportunities for Parents Should be Created**

Numerous left-behind parents reported feeling isolated. Other parents were interested in providing help to other left-behind parents. Recommendations include:

- Establishment or expansion of national, regional and local support networks for parents who are left-behind in cases of parental abduction. These efforts could include:
  - A "buddy" program which pairs a parent whose child was previously abducted (and may or may not have yet been recovered) with a parent whose child has recently been abducted to the same country;
  - Support groups for parents who have children abducted to the same country or countries (e.g., Hague countries; Islamic countries).
  - An Internet Listserve for left-behind parents.

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<sup>5</sup> This recommendation was offered by Patricia Hoff, Esq., legal consultant to the project.



## **Issues in Resolving Cases of International Child Abduction**



**by Janet Chiancone, M.S.  
and  
Linda Girdner, Ph.D.**

**American Bar Association  
Center on Children and the Law  
Washington, DC**

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## **AMERICAN BAR ASSOCIATION PROJECT STAFF**

Linda K. Girdner, Ph.D.,  
Project Director and Principal Investigator  
Janet Chiancone, M.S.,  
Research Associate  
Sally Small Inada and Antoinette Brown  
Focus Group Planners and Facilitators  
Kendra John-Baptiste, Carolyn Barnett, Nefertari Johnson  
Administrative Assistants  
Claudia Schöffel and Alexander Tsisis  
Legal Interns

## **LEGAL CONSULTANT**

Patricia M. Hoff, Esq.

## **PROJECT ADVISORY BOARD**

Ray Clore,  
Director, Office of Children's Issues, U.S. Department of State  
Howard Davidson, Esq.,  
Director, ABA Center on Children and the Law  
Gloria DeHart, Esq.,  
Deputy Attorney General, State of California and  
Consultant to the U.S. Department of State on the Hague Convention  
Rosemary Janvier,  
Family member of abducted child and co-author of research article on international  
child abduction  
Lady Catherine Meyer,  
Mother of abducted children and wife of British Ambassador to the U.S.  
Nancy Nayak,  
Deputy Director, International Division,  
National Center for Missing and Exploited Children  
Leslie Rowe,  
Former Director, Office of Children's Issues, U.S. Department of State  
James Schuler,  
Consular Officer, Office of Children's Issues, U.S. Department of State  
Elizabeth Yore,  
Former Director of the International Division,  
National Center for Missing and Exploited Children

## **OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION**

Eric L. Peterson, Jr.,  
Grant Monitor  
Ronald Laney,  
Director, Missing Children's Program





## **Chapter 1**

# **International Parental Child Abduction**



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## INTERNATIONAL PARENTAL CHILD ABDUCTION

### Introduction

Many children who are abducted by parents to other countries are never returned to the United States. The parents who are left behind face daunting obstacles in attempting to find them and bring them home. At first they do not know who can or will help them. Their emotional and financial resources are stretched to the limit. When years pass without the return of the child, parents are left with unresolved grief. As one parent said, "It's worse than if your child died, because you cannot say the child is at peace now. You live everyday wondering if your child is OK, if she is being abused or neglected. You never get over it." The lucky ones, whose children are returned, often don't want to let their children out of their sight. They live constantly looking over their shoulder--believing that it could happen again.

Parents who abduct their children to other countries are not that different from parents who abduct their children to other states.<sup>1</sup> They often have young children. They usually have support from family or other supportive individuals for what they are doing. They generally do not value the other parent's relationship with the child. Some are convinced that their actions are justified because they believe they rescued their children from the hands of an abusive parent. Many feel disenfranchised from American society and the separation and divorce enhanced their sense of alienation. Some are fleeing domestic violence, whereas others are controlling and abusive themselves.

Many abducting parents go home after the breakup of their marriage. For most international abductors, home is in another country with a different legal system, social structure, and culture and often a different language. These differences, as well as sheer physical distance, make locating, recovering and returning internationally abducted children particularly complex and problematic.

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<sup>1</sup>A parent with ties to another country was identified as one of six risk profiles for child abduction in a study conducted by Janet Johnston (Johnston and Girdner, 1998).

## Research Design

Under a grant from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, researchers at the American Bar Association Center on Children and the Law carried out a study to identify the barriers to resolving cases of international child abduction.

This report presents the findings from that social science research and makes recommendations to reduce various barriers. The authors come from backgrounds in family studies and anthropology. Both have conducted other research on parental kidnapping (Girdner and Hoff, 1994; Sedlak, Gragg, Schultz, Chiancone, Grasso and Wells, 1996; and Johnston and Girdner, 1998). This project did not involve legal research, that is, the analysis of specific statutes or case law, but rather included legal systems and processes as dimensions of the institutional and cultural backdrop within which international abductions occur.

The project involved the following major components:

- a survey of parents in the United States whose children were abducted to or retained in other countries, described in Chapter 2;
- a survey of Central Authorities under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention), described in Chapter 3; and
- a collection of “good practices” in international child abduction from leading agencies, organizations, and practitioners, described in Chapter 4.<sup>2</sup>

Other minor components include the presentation in this chapter of three case studies and findings from a very small survey of attorneys on abduction planning presented in the final chapter.

Little previous social science research has been conducted on international child abduction. The review of relevant literature is primarily incorporated in the discussion of the findings from the left-behind survey in Chapter 2.

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<sup>2</sup>Chapter 4 is co-authored by Patricia Hoff, Esq.

## The Legal Framework

### Civil Law

The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) is an international treaty currently in force between the U.S. and forty-eight other countries.<sup>3</sup> The treaty only applies between countries that are both parties to the Convention. The implementing legislation in the U.S., enacted in 1988, is the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11610 (ICARA).

The Hague Convention provides a right of action to seek the prompt return of a child who is wrongfully removed or retained within the meaning of the Convention. If a Hague proceeding is commenced within one year of the wrongful removal or retention, the judge is mandated to order the child returned forthwith, usually to the country of habitual residence. Return is discretionary if more than one year has passed and the child is settled in the new environment. There are defenses that the abducting parent can raise, but they are purposely limited. A Hague case is not about the “best interests of the child,” but rather about returning the child to the jurisdiction that properly should hear the custody matter. A petition for the return of a child can be brought by a parent with a sole or joint custody order or by a parent who does not yet have a custody order.

Although some countries have other intercountry agreements in addition to the Hague Convention, the U.S. currently does not. When children are abducted to a country that is not a party to the Hague Convention or if they were abducted prior to the country becoming a party, then the Hague does not apply. In such instances, the left-behind parent has very few options. The court in the other country does not have to honor a custody order issued by a U.S. court. Sometimes the only option is to pursue the custody case in the courts there, where the laws and court system are unfamiliar and the language is often unknown to the left-behind parent. This strategy has worked in some countries, but not others.

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<sup>3</sup>As of November 30, 1999, the Hague Convention is in force between the United States and: Argentina, Australia (only for the Australian States and mainland Territories), Austria, Bahamas, Belgium, Belize, Bosnia and Herzegovina, Burkina Faso, Canada, Chile, China (Hong Kong Administrative Region only), Colombia, Croatia, Cyprus, Czech Republic, Denmark (except the Faroe Islands and Greenland), Ecuador, Finland, France (for the whole of the territory of the French Republic), Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, former Yugoslav Republic of Macedonia, Mauritius, Mexico, Monaco, Netherlands (for the Kingdom in Europe), New Zealand, Norway, Panama, Poland, Portugal (including Macau), Romania, Saint Kitts and Nevis, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland (extension to the Isle of Man, Cayman Islands, Falkland Islands, Monserrat and Bermuda), Venezuela, and Zimbabwe.

When a custodial parent in another country has a child abducted to the U.S., he or she has the option of asking the court in the jurisdiction in which the child is found to enforce the foreign custody decree. This remedy is provided under the Uniform Child Custody Jurisdiction Act §23<sup>4</sup>, which creates the duty of the court to recognize and enforce foreign custody orders as long as they were issued properly under the laws of the other country. This provides a remedy for parents from other countries whose children are abducted to or retained in the U.S.

### Criminal Law

All American states have laws that make parental kidnapping, often called criminal custodial interference, a crime. These laws vary from state to state as to whether they cover precustodial abductions or abductions by joint custodial parents. In some states the abduction is a felony only if the child is taken across state lines.

If a state felony warrant has been issued, then it is possible to obtain a warrant for the unlawful flight to avoid prosecution (UFAP) under the federal Fugitive Felon Act. A UFAP warrant is an important hurdle for possibly attaining greater law enforcement assistance, such as involving the Federal Bureau of Investigation (FBI).

In 1993, the U.S. Congress enacted the International Parental Kidnapping Crime Act (P.L. 103-173), making the abduction of a child to another country or the retention of a child in another country from the U.S. a federal felony. The act specifies the preference of Congress that, where applicable, the Hague Convention should take priority as a remedy for returning the child.

Barriers to extradition exist that make these criminal remedies less effective than they may appear to the reader. Some states do not wish to bear the costs of extradition. Often parental kidnapping is not an extraditable offense in the country to which the child was abducted. In other cases, the country may have a policy not to extradite their own citizens.

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<sup>4</sup>As of December 1, 1999, fifteen states have enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as a replacement for the Uniform Child Custody Jurisdiction Act. Similar to its predecessor, the UCCJEA requires state courts to enforce foreign custody and visitation determinations in most cases.



## The Risks of Reabduction

Many parents become so frustrated at the inability of getting their children back in a lawful way that they resort to reabducting the child. Some hire mercenaries (“rescuers”) to help them locate and recover their children and bring them back across international lines. The resulting experience has been mixed. Some parents swear that they would never have seen their children again without this type of strategy and assistance. Others were unsuccessful. After spending thousands of dollars, they still have no contact with their children. Reabduction puts the parent or “rescuers” at risk of being arrested and jailed in the other country.

## Case Studies

Most of the research we conducted provides aggregate data about international child abduction cases. Although a statistical portrait is important in conveying the various facets and complexities of the problem, it often strips away the human dimension. The following stories are provided to remind us that international abductions are not just “cases,” but are depictions of family tragedy, loss, and survival. Many left-behind parents, rightly or wrongly, feel let down by their community and country when they cannot get their child back and sometimes are not even allowed to have any contact with their children.<sup>5</sup>

### **Murad**

Murad is a naturalized U.S. citizen, born in Pakistan and raised in the far east where his father was in the diplomatic service. He has “lived in the United States for the past 15 years and have few ties with my country of origin.”

In 1988, he returned to Pakistan to visit his parents, who had retired there. To please them, he consented to an arranged marriage. “No one was more astonished, when I actually fell in love with Jana within the first four hours of knowing her. I proposed after eight hours.” Murad says he “wanted someone western in their mentality and she knew more about the U.S. than I did.”

Within six months, Murad and Jana had married, but it took over two years and five trips between Pakistan and the U.S. to acquire the necessary documentation for Jana to come to America. Once there, Murad reports, “she and I began building a foundation for ourselves. For a couple of years I was extremely contented . . . she was an ideal wife, a wife that every man dreams about.”

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<sup>5</sup>The actual names and some details have been changed to protect the identity of those who provided their stories. For a personal portrayal of international child abduction/retention, as told by the left-behind parents, see Mahmoody (1987, 1992) and Laylle (1997).

Jana was not as content. She wanted Murad to spend more time at home and missed the social life she had in Pakistan. Murad reports, "I worked so much, she was convinced I was having an affair . . . we would debate fiercely [about] western society, liberal values, and my embrace of the American way of life."

In December 1991, Jana gave birth to Soraya, "a healthy and happy child." Jana's mother and grandmother visited for three months, but when they returned to Pakistan, Murad reports that Jana continued to be unhappy.

In July 1993, Murad unexpectedly received a phone call from his wife, who was in another state. "I'm leaving you and taking our daughter." She took Soraya (then 18 months old) and flew to Pakistan, filing for divorce the day she arrived. Murad reports this action plunged him "into a nightmarish world of legalities, international laws and inaction. Such a drastic and sudden action [by my wife] had me entirely unprepared. Never did I even imagine that Jana's unhappiness would result in her fleeing the country and taking Soraya with her."

Murad went to Municipal Court and obtained a restraining order preventing her from leaving, but was too late. The judge awarded him full-time sole custody. He called his senator's office over 15 times. He contacted the National Center for Missing and Exploited Children and several other missing child organizations, the Justice Department, State Department, the Pakistan Embassy and the U.S. Embassy in Pakistan. "No one could help; some did not even return my calls."

His day-to-day life became a struggle. "The first six months was a crisis. Everything was conspiring against me and I felt powerless to cope." Murad also felt detached from his friends. "Disgusted and unbearably lonely, no one ever called or came to visit." Friends he had known for many years did not return his phone calls. "Some even acted as if I had an infectious disease."

His greatest concern was Soraya. "Nothing depressed me as much as the thought that I would never see her again . . . I realized how much I missed her daily presence when she was not there waiting for me at the front door . . . somewhere 12,000 miles across the sea she was growing older and further away. The thing I feared most was that she would outgrow my memory and grow up assuming that I deserted her."

The effort to recover his daughter also took a harsh financial toll. "I have spent \$31,000 trying to get my daughter back. My telephone was disconnected because of an immense bill and most of my possessions are for sale to pay my legal fees."

In March 1994, Murad flew to Pakistan. He hired an attorney, “one of the top dogs in Pakistan,” and filed for custody in court. At the same time, however, he was working toward a reconciliation. “I spent hours conferring with Jana’s father and brother . . . to convince them that [our] marriage was salvageable. I was asked to write agreements and notices to the family giving my word that I would take better care of her . . . I even agreed on a visit to her psychiatrist.”

During this period, Murad “had seen my daughter once, for only 10 minutes; all that my wife had allowed. I sat in her living room like a stranger . . . Soraya wearing a polka-dot dress and black shoes. My father-in-law sat on my right and Jana to my left. My daughter came and gave me a hug.”

As the custody dispute continued, “all the advice I received from friends, family and support groups, including other victim parents, went clean out the window. I was told to bring back the child, forget about Jana and her feelings . . . punish her and make her life as miserable as I could.”

Murad had been awarded custody by the court in the U.S., and strongly believed “that Pakistani authorities were likely to have done the same, had I only pursued the case to the end.” Still, he didn’t want to separate Soraya from her mother. Instead, Murad gave up and left Pakistan alone. “Since the beginning of this misfortune, I have come into contact with many other victim parents. Most plan to get their child one way or the other without giving much consideration to how a ruthless tug-o-war will affect the child.”

When asked in August 1997 whether there had been any new developments in the case, Murad responded, “None! I have never been more disappointed in the system as I am at this point. I am now a true believer that the U.S. government is more in favor of abductors than victims and the proof is what I live every day.”

## **Renée**

Renee, an African-American research assistant from Pennsylvania had three children (1 girl and 2 boys) with a Kenyan-born professor named Michael. The relationship broke up in 1989 and Renée and Michael were given joint custody of the children. The children were living full time with Renée, and Michael had visitation rights.

A few days after Christmas in 1992, Michael picked up the two boys (Jonathan, age 9 and Leroy, age 7) from school for a scheduled visit. It wasn’t until two days later that Renee realized they had left the country. Unbeknownst to her, Michael had recently quit his job at a university. He and his girlfriend had taken the children to the southern African nation of Lesotho.

Once she realized they were gone, Renée immediately contacted police who “told me everything I needed to do. They even verified that they had left the state of Maryland where the abductor had moved in a matter of hours.” She also contacted the National Center for Missing and Exploited Children, and the state missing children’s clearinghouse within the first 24 hours of realizing an abduction had occurred. Renée also received some tips and legal assistance from a local women’s organization.

To try and locate him and the children, Renée contacted Michael’s friends and family, looked through phone bills and credit card statements, distributed missing child posters and spoke with local media.

Renée believes Michael took the children because he was upset about an upcoming child support decision. She also feels he did it for spite and revenge, and that he didn’t feel there was enough access to the children. Renée had concerns nearly two years earlier that an abduction might occur. At that time, she spoke to her attorney and the judge, but her concerns were not taken seriously. To try and prevent it from happening, Renée reports that she sought a court order requiring (1) posting of a bond, (2) prohibiting removal of the children from the jurisdiction, and/or (3) supervised visitations. None of these requests were granted by the court.

It took nearly a year to locate Michael and the children. The local prosecutor helped her by requesting that federal authorities issue a UFAP (Unlawful Flight to Avoid Prosecution) warrant against Michael. “This was instrumental in locating the abductor and children.” Once the warrant was issued, “the FBI tracked them. After doing so, [Michael’s girlfriend] notified the U.S. embassy in fear.” Shortly after, Michael contacted Renée by letter. Renée learned that Michael had gotten a new job in Lesotho and he had been living there with his girlfriend and sons. As Michael had no known connection to Lesotho, it had been especially difficult to track him. Once Renée had an address, she began corresponding with her sons. She tried unsuccessfully to negotiate with Michael to voluntarily return the children.

Even with the UFAP, Renée was frustrated. She believes an obstacle to recovering her children was the abduction destination. “If you don’t have it [a UFAP warrant], the FBI won’t help locate. It becomes ineffective when you find out your country won’t do [expletive] to help you get them back, especially if they are in a country that is not under Hague convention.”

Renée requested and received reports of welfare and whereabouts checks of her boys from U.S. Embassy staff in Lesotho. She states, “I decided not to get my kids because I was afraid of doing more harm [since] it took a year to find them and the U.S. Embassy in Lesotho said they seemed well.” Early in 1996, Renée reported that at the time of the abduction, the boys “did not know what [had] happened.” She also indicated that they were beginning to ask questions and “are ready to come home.”

In March of 1997, Renée received a call from the U.S. Embassy in Lesotho. They told her that Jonathan (now age 12) “had run away from his father. He was ragged and hungry and he wanted to come home.” The U.S. government paid his airfare to Pennsylvania where he was reunited with his mother and sister (now 17 years old). Renée reports that he “still has the same sweet face,” and she is hoping that Leroy will join him soon.

Renée suggests that victim parents “use missing children’s organizations’ resources first and then police to understand what to do. Most people are uninformed.” She also feels greater education about parental abduction is needed for parents, judges, attorneys and schools.

## **Phillip**

Phillip, an accountant in his 30's, had been recently unemployed in March 1994 when his three children (2 boys and 1 girl) were abducted from Illinois by their English mother, Christina.

Phillip and Christina were in the process of getting divorced. Custody was pending at the time of the abduction. Phillip reports that it was expected they would get joint custody, with physical custody to Christina and visitation rights for Phillip.

Phillip went over to Christina’s home to pick up the children at his regularly scheduled time on a Friday evening when he “found the apartment empty and everyone gone.” Missing were Christina and Phillip’s three children: James (8), Peter (7) and Nicole (4). Christina had previously made threats that he would never see his children again. When he expressed concern about a possible abduction, he “asked my lawyer. He said not to worry, she wouldn’t do that.”

Phillip contacted law enforcement immediately. He was told that he needed a custody order before any action could be taken. They did “take information on children and filed a child abduction report. That’s it. They would not put children in NCIC.” He contacted his divorce lawyer to file for temporary custody of the children, which was granted.

As he began to search for his children and the abductor, Phillip learned that Christina had carefully planned the abduction. She had been saving money, had sold her furniture, TV and household goods, had collected legal documents and records (e.g., birth certificates), and applied for passports for the children from the British Embassy.

The abductor and children were located shortly after the abduction. “Abductor went straight to her parent’s house and hid.” Phillip reports that law enforcement in Great Britain were “extremely helpful in confirming children’s location.”

Within the first week of the abduction, Phillip learned about the Hague Convention from his brother. He submitted a Hague application within one month to the Central Authority in Great Britain. Phillip reports that the U.S. Department of State were “encouraging but very slow in processing paperwork. I bypassed them when I could.” His Hague application was accepted by the Central Authority in Great Britain. At no cost, he was assigned an attorney from Reunite: National Council for Child Abduction, a missing children’s organization in Great Britain. Phillip reports that the attorney “was extremely helpful. She was a specialist in child abduction cases.”

The Central Authority served papers to the abductor. “The process server was turned away the first time, but papers were served when the process server came back the next day with police.” Phillip was encouraged that the Hague hearing was held in London. “The abductor’s father had been mayor of the town to where the children were abducted. He had political clout in the area.”

Phillip did not attend the Hague hearing. “I was not needed there.” He was represented by his attorney, who attended along with the abductor, her attorney, and members of her family. Phillip reports that “it appears from court documents that all that was discussed were the particulars/facts and country of habitual residence.” The court ordered the children returned to the United States.

The abductor tried to prevent the return of the children. She “almost fled with the children [and] was not going to deliver children at specified time/date per court order. But, she was advised that she would go to prison if the order was violated.”

Phillip went to pick up the children. “Children were ordered to be delivered to Manchester Airport on April 1, 1994 at 9 a.m. Abductor delivered children to airport at 9:45. I had a lawyer assigned to be with me at the airport to ensure security/problems if the children were not delivered.”

Phillip reports he received a lot of assistance in the search and recovery of his children. Financial, emotional and informational help came from friends and family, attorneys, the Central Authority and clergy. He also received assistance from a company in Chicago which helped with airfare for himself and his children.

One of the greatest barriers he faced was the lack of finances. Even though he was unemployed, Philip estimates that he spent about \$2,500 in searching and recovering his children. The largest part of this were attorneys fees in the U.S. He also feels that being a searching father, especially without a custody order, was a barrier: “No one would help me until I received a custody order!”

Phillip reports that, “In my situation, everything went so fast. After I received temporary custody order everything fell right into place. All I can say is I was really blessed. It could have been much worse. Much worse.” He considers the Central Authority in Great Britain and the court in London to have been “outstanding.”

### Important Note to Readers

Phillip and his children were very fortunate to have been reunited so quickly. In most international abductions the children are not returned. The process, even in the many Hague countries, is full of obstacles and frustrations.

The left-behind parents' stories depict their experiences of reality, which are not the same reality experienced by the abducting parents or even the children. Some organizations, agencies and individual practitioners who handle these cases would dispute the views of parents. But even these professionals do not all perceive cases in the same ways. Like the story of Rashomon, an international child abduction represents many different takes on reality. Actions and events are interpreted through the various lenses of organizational and national culture as well as personal and professional experiences and roles. Though it may be difficult for some readers to accept, we are not elevating any one depiction of reality above the others in this report. Instead we invite the reader to learn how the nature of the barriers to resolving these cases shifts depending on how the person is situated. Successfully navigating these often conflicting and contradictory perspectives is often at the crux of resolving international abductions.

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## **Chapter 2**

### **Survey of Left-Behind Parents in Cases of International Parental Abduction**



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# **SURVEY OF LEFT-BEHIND PARENTS IN CASES OF INTERNATIONAL PARENTAL ABDUCTION**

## Chapter Summary

*“Your child’s not missing, lady. You know where he is -- he’s with his father.”*

These are crushing words to a parent whose child has been abducted by the other parent. Previous research has documented the frustration parents face when contacting law enforcement and other officials to try and recover their children in cases of domestic abduction. Trying to negotiate the maze of law enforcement, prosecutors and courts in different states can be extremely challenging.

When a child is taken to a foreign country, parents face a whole new set of obstacles. Different legal systems, languages, and even attitudes often overwhelm parents, making the pursuit of their child that much more difficult. In many cases, the systems in place to help parents offer little relief.

In 1995, the American Bar Association Center on Children and the Law began working with national missing children’s organizations to survey left-behind parents in cases of international parental abduction. A total of 97 parents responded to the survey, describing their experiences and offering insight into the obstacles they faced in trying to locate and recover their children. Some parents hired attorneys in the foreign country, others hired private investigators. Yet others hired mercenaries to recover their children.

The findings of the survey are dramatic:

### Study’s Primary Findings

**Abductors generally had strong ties to the country of destination and differed from the left-behind parent in background, education, and employment. Mothers and fathers in their thirties were the most common abductors.**

- Most left-behind parents reported that abductors had connections to the country to which the child was abducted. Eighty-three percent (73 cases) reported that the abductor spoke the language of the country. Other connections included having family in the country (76.1%), living in the country as a child (69.3%), and growing up mainly in that country (68.2%).
- Most abductors and left-behind parents differed in nationality (83.1%), ethnicity (68.8%), and religion (58.4%). Over 40% were of different races.



- Over 60% of abductors were citizens of another country, whereas just over 20% were only U.S. citizens. Over 15% held dual citizenship.
- Mothers and fathers were equally likely to be abductors, although patterns differed as to destination. Mothers were more likely to abduct to Latin America, whereas fathers were more likely to abduct to the Middle East. Europe was a common destination of both. These differences reflected the patterns of intermarriage.
- Over half of the abductors were in their 30's and about 30% were in their 20's.
- The educational attainments of half of the abductors were a high school degree, its equivalency, or some college credits. Left-behind parents were generally more educated than their abducting spouses.
- Almost three-quarters of abductors earned less than \$25,000 per year prior to the abduction, including 20% having had no income. Generally, left-behind parents were more gainfully employed than their abducting spouses.

**Forty-six countries were listed as abduction destinations.**

- Nearly one-third were to Latin American countries.
- Europe was the destination for 21% of abductions.
- 25% of abductions were to a Muslim country.
- One-third of abductions were to countries which were parties to the Hague Convention on the Civil Aspects of International Child Abduction at the time of the abduction.

**The number of children recovered was low.**

- Less than half of the children (41%) had been recovered.
- About 70% of children had been located (25% of parents reported that the child's location had always been known).

**Recovery and length of separation appear to be linked.**

- Cases where there was a recovery reported significantly shorter separation than in non-recovered cases.
- Half of recovered cases were separated less than 1 year.
- Nearly half of the non-recovered cases reported being separated for over 5 years.
- The length of separation in abductions to Hague countries was significantly shorter than those to non-Hague countries.

**Parents encountered six primary obstacles in the search and recovery of their children.**

- Lack of sufficient funds.
- Laws of other countries.
- Ease of exiting the U.S.
- Lax attitude of law enforcement agencies.
- Judges' lack of experience in international abduction cases.
- Difficulty working with government agencies and officials in foreign countries.

**Planning was indicated in a great number of abductions.**

- Nearly half of abductions occurred during a court-ordered visitation.
- 80% of abductors received assistance from family members in carrying out the abduction or making it successful.
- One-fifth of cases reported the child was moved by the abductor from country to country following the abduction.

**The timing of the abduction was unpredictable.**

- 20% of left-behind parents and abductors were living together in the same household at the time of the abduction.
- 40% of abductions occurred within the first year of living apart.
- 20% of abductions occurred after more than 3 years of living apart.

**Abductors made a number of serious threats prior to the abduction.**

- 80% threatened that the left-behind parent would never see their child again.
- 60% of abductors threatened the life of the left-behind parent.
- Over 20% of abductors threatened the life of the abducted child.

**Parents reported high levels of dissatisfaction with law enforcement's initial response to the abduction.**

- Over 80% of parents contacted law enforcement within 24 hours of the abduction.
- 60% contacted the police within two hours of their first concern about the child's whereabouts.

- Two-thirds of parents received little to no assistance from the law enforcement official they first spoke with regarding the abduction.
- Examples of the poor response included being told that the child had to be missing for a prescribed period of time before they could take action, or that the police could not do anything unless there was evidence the child had left the state.
- In some cases, the lack of initial law enforcement response may have enabled the abduction to be successful.

#### **Parents feel strongly about U.S. passport and departure laws.**

- Two-thirds of parents listed the “ease of exiting the U.S.” as an obstacle to the recovery of their abducted children. Over half considered it one of the major obstacles.
- 22% of parents recommended that the U.S. require both parents’ permission for passport issuance and/or foreign travel for a minor child.

#### **Parental abduction is still widely regarded as a private family matter.**

- 67% of parents reported encountering individuals and organizations which they perceived as regarding parental abduction as a family problem which did not require legal intervention.
- One-third of parents reported that law enforcement would not take information about their case because they saw the abduction as a domestic situation.

#### **Left-behind parents pay a high price, both financially and emotionally, in cases of international abduction.**

- Left-behind parents spent an average of \$33,500 in the search and recovery of their children.
- 24% of parents reporting on expenses said they spent \$75,000 or more.
- Those with higher incomes generally spent more money, but more than half of parents across all income brackets reported spending as much as or more than their annual income.
- 85% of parents turned to family and friends for emotional support.
- 43% relied on professional counselors or therapists.

- One-fifth of the parents reported using prescription drugs to cope with the stress during the time their child was gone.
- Many parents reported a desire to establish stronger support systems and networking opportunities to work with other parents who are victims of family abduction.

International abductions are most often carried out by mothers and fathers in their twenties and thirties with young children who have strong ties to the country to which the child is abducted and have few economic ties to the community that they leave.

Most alarming is that about 60% of children who are abducted from or retained outside of the U.S. are not returned, even though their whereabouts are often known. Many parents were concerned in advance that the other parent might abduct the child and requested preventive measures. Judges, all too often, did little or nothing to order preventive measures. Parents, coming from all walks of life, often had to be the ones educating or prompting the practitioners about how to proceed in their case. The emotional and financial toll on these parents was considerable. Combined with seeing little progress in their case and grieving over their missing child, many expressed feelings of despair and disappointment in their community and government.

The survey findings are detailed in the following report. Each subtopic is followed by a discussion which also compares the findings to other studies. The research methodology and the survey instrument are provided in Appendices A and B.

## A. BACKGROUND ON INTERNATIONAL PARENTAL ABDUCTION

Parental abduction is defined as the “taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member.” (Girdner, 1994a, p. 1-11). Abductors may be other family members or their agents (e.g., girlfriend, boyfriend, grandparent, or even a private investigator), although in most cases the abductor is a child’s parent (Girdner, 1994a).

In 1988, a nationwide telephone household survey produced estimates of the number of family abductions (to both domestic and international destinations) nationwide (Finkelhor, Hotelling & Sedlak, 1990).<sup>1</sup> Cases were categorized as being either:

- **“Broad Scope,”** where a family either took a child in violation of a custody agreement or decree; or failed to return or give over a child at the end of a legal or agreed-upon visit (in violation of a custody agreement or decree), and the child was away at least overnight. It is estimated that 354,100 children experienced an abduction under this definition. This category included most cases that would be considered abduction under the broadly defined statutes, as well as many in which law enforcement agencies and prosecutors would not be involved (either due to more stringent legal definitions or by discretion).
- **“Policy Focal”** are cases which fit the broad-scope definition, but also have at least one of the following characteristics: (1) an attempt was made to conceal the taking or whereabouts of the child and prevent contact between the other parent and the child; (2) the child was transported out of state; or (3) evidence existed that the abductor intended to keep the child indefinitely or permanently affect custodial privileges. About 46% of the broad scope cases (163,200), fell into this narrower definition (Finkelhor, Hotelling & Sedlak, 1991).

All international parental abductions are within the “policy focal” category.

Other research which looked specifically at cases of international parental abduction have found the following:

- A study of fifty-two parental abduction cases registered with the National Center on Missing and Exploited Children (NCMEC) revealed that 15.3% of these cases were international abductions (Hatcher & Brooks, 1994).

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<sup>1</sup>Hereinafter referred to as NISMART (National Incidence Study on Missing, Abducted, Runaway and Throwaway Children in America).

- A study based on records in two California district attorneys' offices revealed that 7.5% of 610 parental abduction cases were international (Sagatun-Edwards, 1996).
- Between the late 1970's and 1993, the United States Department of State was contacted in 5,200 cases of children who had either been abducted or prevented from returning to the United States by one of their parents (Markey, 1993). In 1992 alone, 515 children were abducted from the United States to foreign countries--a rate of about ten children per week (Markey, 1993). From 1988 until 1992, there were also 564 incoming Hague Convention cases in which parents abducted their children to the United States.
- Data gathered for chapter 3 of this study indicates that the U.S. Department of State currently has over 800 unresolved outgoing cases to Hague countries alone.

International abduction destinations vary, often depending upon: (1) whether the country is easily reached through international travel (airlines); (2) the unwillingness of courts in a country to enforce foreign custody orders; and (3) the availability of family support for foreign-born abductors fleeing to their home country (Hegar, 1990). Previous research has found that countries with the greatest volume of both incoming and outgoing Hague applications are: the United States, United Kingdom, Canada, Germany, France and Mexico (Agopian, 1987; Markey, 1993).

## **B. OBJECTIVES**

The objectives of the survey of left-behind parents were to document the problems encountered by left-behind parents residing in the U.S. who seek recovery of children taken or retained by the other parent across an international border. More specifically, the survey explored the following related areas:

- Identifying the circumstances surrounding the international abduction and how certain factors influence the processes by which parents attempt to locate and recover their children (e.g., How do parents learn about the Hague Convention? What strategies are used by parents in locating and/or recovering their children?).
- Identifying basic demographic and other social/cultural characteristics of the families and parental abductors to better understand the nature of international abduction cases (e.g., nationality and gender of abducting parent, use of an accomplice, gender and age of child abducted, dual citizenship, existence of custody and visitation orders).
- Identifying what legal and administrative procedures are available as preventive measures (e.g., passport restrictions, restraining orders), assessing the barriers to obtaining them, and determining how effective they have been in preventing abduction.

- Understanding left-behind parents' perceptions of how various governmental and non-governmental agencies (e.g., Central Authorities, law enforcement, FBI, missing children's organizations) respond to international parental abduction and how such responses or expectations can be improved.
- Assessing the social and financial costs to the left-behind parents to better understand the short- and long-term consequences of international parental abduction (e.g., cost of obtaining legal counsel, hiring of private investigators, traveling abroad).
- Increasing knowledge about the role of missing children's organizations and other entities concerning international abductions from the United States.

## **C. DESIGN**

The survey of left-behind parents was designed to give expression to their experiences to better understand the obstacles they faced before and after the abduction. Ninety-seven parents responded by returning the very lengthy questionnaire. For more information on the design, sample, method, and limitations of the survey, see the detailed description in Appendix A. A copy of the survey instrument is provided in Appendix B.

## **D. SURVEY FINDINGS**

### **1. The Abduction Event**

#### Date of Abduction

Although the actual date of abduction for cases spanned a period of over 10 years, all but 3 of the cases were active at some point between January 1, 1990 and December 31, 1994. The earliest abduction date in the sample was September 1, 1984; the most recent was April 20, 1995. The project staff decided to include 3 early 1995 surveys to increase the response rate.

There was no particular pattern to the day of the week when a child was abducted. Just over half of the abductions occurred during the week (50 or 53.7%), while another 40.8% (38) occurred on a weekend. The rest (5 or 5.3%) occurred on a holiday.

### State Child Taken From

Respondents reported their children were taken from one of 34 different U.S. states. California, New York, Texas, and Florida had the highest numbers of abductions (31, 6, 6, and 4, respectively).<sup>2</sup>

Parents were asked to report the location from which their child was taken. Most were taken from either the left-behind parent or abductor's home, as the following table shows:

<b>Table 1: From where was child abducted?</b>		
	<b>Frequency</b>	<b>Percentage</b>
<b>Left-behind parent's home</b>	35	36.5%
<b>Abductor's home</b>	33	34.4%
<b>School/day care</b>	8	8.3%
<b>Abductor's relative's home</b>	7	7.3%
<b>Left-behind parent's relative's home</b>	2	2.1%
<b>Other</b>	11	11.4%

### Abduction Destination

As these were cases of international parental abduction, the abduction destination for all cases was outside of the United States. Most respondents were able to answer where their child was taken. Three parents did not know the destination.

A total of 46 countries were listed as abduction destinations. The most frequent abduction destinations were Mexico (16 or 17.6%), France (6), Israel (4), Germany (3), Philippines (3), Iran (3), Syria (3), and Egypt (3).

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<sup>2</sup>Upon reviewing the characteristics of the overall sample, researchers learned that the number of cases in which abductions had occurred from the state of California were higher than other states. This was true for the samples provided by all three missing children's organizations.



The following countries were listed as abduction destinations by one or two respondents: Algeria, Australia, Bahamas, Bangladesh, Belize, Canada, Chile, Colombia, Czech Republic, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Italy, Japan, Jordan, Lebanon, Lesotho, Morocco, Netherlands, New Zealand, Nigeria, Pakistan, Saudi Arabia, South Africa, Sudan, Sweden, Taiwan, Turkey, Ukraine, United Kingdom, United Arab Emirates, Uruguay, and Venezuela. By continent or region, abduction destinations were divided as follows:

- 28 (29.8%) to Latin America (includes South and Central America and Mexico)
- 20 (21.3.6%) to European countries
- 17 (17.5%) to Middle East countries (includes Israel but not North Africa)
- 12 (12.8%) to Asian countries (includes 8 Islamic countries in Asia)
- 8 (8.2%) to African countries
- 4 (4.3%) to New Zealand and Australia
- 3 (3.2%) to Caribbean countries
- 2 (2.1%) to Canada

Three were to unknown destinations. Overall, 25% of the abductions were to an Islamic country.

At the date of the abduction, about one-third of the destination countries were parties to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention). Two-thirds were not. While several countries had since become parties to the Hague Convention, parents were precluded from using it to recover their children because it was not in effect at the time the abduction had occurred.

#### Number of Times Abducted or Retained

The overwhelming number of respondents (84 or 86.6%) reported that their child had been abducted to or retained in another country *one time only*. The mean number of abductions was 1.14, with 12 respondents reporting that their child had been taken or retained twice, and only one reporting that it had occurred three times. No respondent reported that it had occurred more than 3 times.

Seventeen parents (17.9%) reported that the child was moved from country to country following the abduction. About one-third of these cases had children moving to 3 or more countries:

<b>2: Number of countries child was moved to during the abduction</b>	
<b>Number of Countries</b>	<b>Number of Responses</b>
<b>Two countries</b>	8
<b>Three countries</b>	3
<b>Four countries</b>	1
<b>Five countries</b>	1
<b>Unknown</b>	4

One parent who was unsure reported that "the children said they got off and on planes several times."

### Discussion

Respondents to the current study appear to represent a wide range of parents whose children have been abducted from the United States to another country. Both the origination and destination locations for these abductions literally cover the map. The extremely large number of cases which originated in California can largely be explained by the original sample in which California was over represented. However, the destination countries were much more varied and there appears to be no clear connection between origination and destination locations. For example, there is no evidence to suggest that most abductions which ended up in Mexico came from California. There was also no pattern as to whether abductions were to Hague or non-Hague countries, as the destinations were evenly split.

Only four of the respondents reported that their children were retained in another country (following a visit, for example), rather than abducted. In most cases, the abduction or retention appeared to be planned. Later findings regarding how the abduction was planned support this conclusion. A relatively large minority (17.9%) also reported that their children were moved from country to country following the abduction. In these cases, it appears that the abductor was making efforts to avoid detection by law enforcement and/or the left-behind parent.

## 2. CHARACTERISTICS OF LEFT-BEHIND PARENT, ABDUCTOR AND CHILD

### Gender and Age

Respondents were nearly equally distributed in terms of gender, and over half were in their thirties, as the following tables show:

<b>Table 3: Gender of left-behind parents and abductors</b>		
	<b>Male</b>	<b>Female</b>
<b>Left-behind parents</b>	49 (50.5%)	48 (49.5%)
<b>Abductors</b>	48 (49.5%)	49 (50.5%)

<b>Table 4: Ages of left-behind parents and abductors</b>				
	<b>Left-behind parent</b>		<b>Abductor</b>	
	<b>Frequency</b>	<b>Percentage</b>	<b>Frequency</b>	<b>Percentage</b>
<b>20 and under</b>	-	-	1	1.0%
<b>21 to 25</b>	13	13.4%	15	15.5%
<b>26 to 30</b>	21	21.1%	15	15.5%
<b>31 to 35</b>	26	26.8%	26	26.8%
<b>35 to 40</b>	25	25.8%	26	26.8%
<b>41 to 45</b>	7	7.2%	8	8.2%
<b>46 to 50</b>	4	4.1%	4	4.2%
<b>51 and up</b>	1	1.0%	2	2.1%

## Education and Income

Left-behind parents and abductors did differ in terms of their educational background and income levels, with abductors generally at lower levels:

<b>Table 5: Educational background of left-behind parents and abductors</b>				
	<b>Left-behind parent</b>		<b>Abductor<sup>b</sup></b>	
	<b>Frequency</b>	<b>Percentage</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Not completed high school</b>	5	5.2%	9	9.8%
<b>High school degree or GED</b>	9	9.4%	23	25.0%
<b>Some college credits</b>	33	34.4%	23	25.0%
<b>Four-year college degree</b>	13	13.5%	13	14.1%
<b>Some grad school</b>	12	12.5%	5	5.4%
<b>Grad or professional degree</b>	24	25.0%	19	20.7%

<sup>a</sup> Five left-behind parents did not know the educational background of the abductor.

<b>Table 6: Income of left-behind parents and abductors<sup>b</sup></b>				
	<b>Left-behind parent</b>		<b>Abductor</b>	
	<b>Frequency</b>	<b>Percentage</b>	<b>Frequency</b>	<b>Percentage</b>
<b>No income</b>	3	3.2%	17	19.3%
<b>Under \$15,000</b>	24	25.3%	31	35.2%
<b>\$15,000-\$24,999</b>	20	21.1%	18	20.5%
<b>\$25,000-\$34,999</b>	19	20.0%	10	11.4%
<b>\$35,000-\$44,999</b>	9	9.5%	8	8.2%
<b>\$45,000-\$54,999</b>	8	8.4%	-	-
<b>\$55,000 and over</b>	12	12.6%	4	4.5%

<sup>b</sup> Income information was missing for two left-behind parents and for nine abductors.

Respondents were asked to answer an additional series of questions regarding their and the abductor's employment and income status:

<b>Table 7: Employment and Income Status at Time of Abduction<sup>c</sup></b>				
	<b>Left-behind parent</b>		<b>Abductor</b>	
	<b>Frequency</b>	<b>Percent of cases</b>	<b>Frequency</b>	<b>Percent of cases</b>
<b>Receiving public benefits?</b>	7	7.2%	10	10.6%
<b>Unemployed?</b>	11	11.3%	28	29.8%
<b>Employed full-time?</b>	69	71.1%	42	44.7%
<b>Employed part-time?</b>	10	10.3%	17	18.1%
<b>In a training program?</b>	5	5.2%	5	5.2%

<sup>c</sup> Respondents could answer more than one item, so totals may equal more than 100%.

#### Racial/Ethnic Backgrounds

While left-behind parents and abductors in international parental abductions came from a variety of different racial and ethnic backgrounds, the results showed more diversity among abductors:

<b>Table 8: Race/ethnicity of left-behind parents and abductors</b>				
	<b>Left-behind parent</b>		<b>Abductor</b>	
	<b>Frequency</b>	<b>Percentage</b>	<b>Frequency</b>	<b>Percentage</b>
<b>White</b>	72	75.0%	38	39.6%
<b>Black/African American</b>	5	5.2%	3	3.1%
<b>Hispanic/Latino</b>	9	9.4%	23	24.0%
<b>Asian/Pacific Islander</b>	6	6.3%	7	7.3%
<b>Native American Indian</b>	1	1.0%	-	-
<b>Other</b>	3	3.1%	25	26.0%

The "Other" category included other Asian (Pakistani, Iranian), Middle Eastern (Lebanese, Jordanian), African (Sudanese, Nigerian) and Caribbean (Haitian) nationalities.

### Citizenship Status

Most left-behind parents (77 or 79.4%) were citizens of the United States. An additional 8 (8.2%) were dual citizens of the United States and another country, while 4 respondents were citizens of Mexico, and 2 of France. One respondent each was a citizen of Indonesia, Pakistan, the Czech Republic, the Bahamas, Argentina and the Netherlands.

While the largest group of abductors also indicated U.S. citizenship (22.7%), twice as many abductors than left-behind parents were dual citizens of the U.S. and another country (16.5%), and a much greater number claimed citizenship from another country:

<b>Table 9: Citizenship status of left-behind parents and abductors</b>			
	<b>Citizen of U.S. only</b>	<b>Dual Citizen (U.S. &amp; other country)</b>	<b>Citizen of other country only</b>
<b>Left-behind Parent</b>	79.4%	7.9%	12.7%
<b>Abductor</b>	22.7%	16.5%	61.8%

### Abductor's Connection to the Abduction Destination

Most left-behind parents (88) reported that abductors had connections to the country to which the child was abducted. Eighty-three percent (73 cases) reported that the abductor spoke the language of the country. Other connections included having family in the country (76.1%), living in the country as a child (69.3%), and growing up mainly in that country (68.2%). The following table shows the different relationships that abductors had to the country to which they abducted the child:

<b>Table 10: Abductor's relationship to abduction destination country</b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Citizen of that country only (not U.S.)</b>	50	56.8%
<b>Dual national of U.S. and that country</b>	19	21.6%
<b>Had family in that country</b>	67	76.1%
<b>Had close friends in that country</b>	58	65.9%
<b>Spoke language of that country</b>	73	83.0%
<b>Grew up mainly in that country</b>	60	68.2%
<b>Lived in that country as a child</b>	61	69.3%
<b>Lived in that country as an adult</b>	49	55.7%
<b>Had visited that country</b>	43	48.9%
<b>Same race or ethnicity as many in that country</b>	58	65.9%
<b>Employed or had business interests in that country</b>	27	30.7%
<b>Other relationship to country</b>	12	13.6%

Nine respondents indicated that there was no known relationship between the abductor and the destination country.

#### Differences

A series of questions was asked to gather information regarding the differences in backgrounds of left-behind parents and abductors. The chart below indicates those differences identified by left-behind parents:

<b>Table 11: Cases in which left-behind parent and abductor were of different . . .</b>		
	<b>Number of responses</b>	<b>Percent of cases</b>
<b>. . . religions</b>	45	58.4%
<b>. . . ethnic groups</b>	53	68.8%
<b>. . . races</b>	34	44.2%
<b>. . . nationalities</b>	64	83.1%

### Characteristics of Abducted Children

The number of children taken ranged from 1 to 3. No parent reported more than 3 of their children being taken by the abductor. Twenty six parents reported that 2 children were taken; 3 parents reported that 3 children were taken. The remaining 68 parents (70%) reported having one of their children taken.

Gender did not appear to be a factor in the abduction. Abducted children were nearly equally divided by gender. In all, 61 boys and 65 girls were abducted by the other parent.

Abducted children tended to be young. The youngest child abducted was five months old; the oldest twelve and a half years old. The mean age of abducted children was about five and a half years old.

### Relationships

The vast majority of both abductors and left-behind parents were either the mother or father of the child who was abducted to or retained in another country:

Table 12: Relationships to abducted child				
	Left-behind parent		Abductor	
Relationship	Frequency	Percentage	Frequency	Percentage
Mother	49	50.5%	44	45.4%
Father	45	46.4%	51	52.6%
Step-parent	1	1.0%	-	-
Other Family	2	2.1%	1	1.0%
Other	-	-	1	1.0%



Most of these individuals had at one time been married to each other, as the following table shows:

<b>Table 13: Legal relationship of left-behind parent to abductor at time of abduction</b>		
	<b>Frequency</b>	<b>Percentage</b>
<b>Married</b>	15	15.6%
<b>Separated</b>	28	29.2%
<b>Divorced</b>	41	42.7%
<b>Never married</b>	8	8.3%
<b>Family member</b>	1	1.0%
<b>Other</b>	3	3.1%

### Discussion

Many of the findings of this survey confirm previous studies' findings regarding the characteristics of abductors, left-behind parents, and children. For example, the age of the abductor in this study (30's) is similar to previous research (Finkelhor, Hotaling and Sedlak, 1990; Agopian and Anderson, 1981; Johnston, 1994). This survey also found that the gender of the abductor was evenly split between male and female; findings which support previous study results from Hegar and Greif (1994), and the international sample from Johnston (1994). NISMART (Finkelhor, et al., 1990) and Janvier, McCormick and Donaldson (1990) both found a greater number of male than female abductors.

Both Greif and Hegar (1993) and Finkelhor, et al., (1990) found high numbers (41% and 54%, respectively) of parental abductions occurring during the period between separation and divorce, a time when much conflict can occur. The findings of Johnston, Campbell and Mayes (1985) suggest that children in families having high levels of ongoing parental conflict (e.g., re-litigation of custody, physical or verbal aggression directed toward one parent, or the formation of a parent-child alliance excluding the other parent) are at risk for abduction, even with frequent parental visitation or joint custody arrangements.

In the study of risk factors for abduction (Johnson, 1994, Sagatun-Edwards, 1996) almost a quarter of abducting parents were unmarried while in the current study only 8.3% were unmarried. One of the reasons may be that couples in the current study needed to marry in order to become permanent residents (a large number were immigrants). The unmarried parents in Johnston's (1994) study were largely made up of low-income African American parents. They were also less likely to abduct internationally, as most family ties were in the U.S. and funds were limited.

Janvier, et al.'s (1990) data, drawn from a survey of 65 left-behind parents nationwide, also showed a difference between international and domestic cases. For example, the data reflected that parents were divorced in just a quarter of the international cases (compared to nearly half of the domestic cases), and that in close to one-fifth (19%) of the international cases, parents were married at the time of the abduction (compared to only 2% for domestic cases).

Abductors appear to have been experiencing more economic problems at the time of the abduction than the left-behind parent. A far fewer number were employed full-time, and more than twice as many abductors were unemployed than were left-behind parents. About one-fifth of abductors reportedly had no income, and an additional 35.2% had incomes of less than \$15,000 a year. Left-behind parents, on the other hand, appear to have been distributed relatively evenly across the income range, although most had incomes under \$35,000. Nearly three times as many left-behind parents than abductors had incomes of \$55,000 and over.

Some may assume that most cases of international parental abduction involve parents who have very different backgrounds. The national average of international marriages is 8.4%, but Hegar and Greif (1994) found that about 50% of the international abductions they surveyed were cases of cross-cultural marriage. About 16% of their entire sample of abductions were cross-cultural marriages.

Sagatun-Edwards (1996) found that 18.9% of all abductions she examined were interracial. The findings of this study are mixed. While the great majority of respondents reported that they and the abductor were of different nationalities, far fewer reported a difference in ethnicity, religion and race. Some of the differences in nationality can be accounted for by the dual citizenship held by 16% of abductors, and left-behind parents and abductors were clearly divided in terms of sole citizenship. More than three-quarters of left-behind parents were citizens of the U.S. only, while nearly two-thirds of abductors were reportedly only citizens of a country other than the U.S.

Most abductors were closely aligned with the abduction destination country. The greatest number had family and grew up in the destination country, and more than half had close friends living there. About one-third had employment or business interests in the destination country. It is likely that they perceived the abduction as a return "home," where they would receive positive emotional support and perhaps have greater economic and employment opportunities. In addition, they would have assistance available to care for the abducted child.

The young age of children abducted (the mean age was about five and a half) confirms findings from other studies which have looked at this characteristic (Finkelhor, et al., 1990; Forehand, Long and Zogg, 1989; and Agopian, 1981). Perhaps abductors perceive that children who are younger will be more controllable during the abduction and offer less resistance. However, taking a much younger child (e.g., an infant) may present a separate set of problems for the abductor in terms of having to meet the child's physical needs (e.g, changing diapers, bottle-feeding) and attracting attention from fellow travelers, airport officials, etc.)

### 3. EVENTS/CONDITIONS LEADING UP TO THE ABDUCTION

At the time of the abduction, nearly one-quarter (19.1%) of the abductors and left-behind parents were living together in the same household. Of the 78 (80.4%) of couples who had been living apart, 41% had been apart less than one year:

<b>Table 14: Length of period left-behind parent and abductor had been living apart</b>		
	<b>Frequency</b>	<b>Percentage</b>
<b>1 day to 6 months</b>	19	24.4%
<b>7 - 12 months</b>	13	16.7%
<b>13 - 20 months</b>	17	21.8%
<b>21 - 28 months</b>	9	11.5%
<b>29 - 36 months</b>	4	5.1%
<b>Over 3 years</b>	16	20.5%

#### Custodial Status Prior to Abduction

In nearly three-quarters of cases (72 or 74.2%), a custody order was in effect at the time the abduction occurred. In the largest category of cases, the left-behind parent had both legal and physical custody of the child:

<b>Table 15: Prior to abduction, who had custody of child?</b>				
	<b>Legal Custody</b>		<b>Physical Custody</b>	
	<b>Frequency</b>	<b>Percentage</b>	<b>Frequency</b>	<b>Percentage</b>
<b>Left-behind parent</b>	32	33.0%	40	42.1%
<b>Abductor</b>	9	9.3%	18	18.9%
<b>Both</b>	41	42.3%	24	25.3%
<b>Other</b>	15	15.5%	13	13.7%

A series of additional questions was asked regarding custody and court status at the time of the abduction:

- 23.3% of parents reported that the abduction occurred before they or the abductor had filed for custody;
- 24.0% of parents reported that the abduction occurred while a custody suit (instigated by either the left-behind parent or abductor) was pending;
- 47.8% of parents reported that the abduction occurred during a court-ordered visitation.

Twenty-one parents (21.6%) also answered that they had other children living with them at the time of the abduction, but that these children were not taken by the abductor. In most of these cases (60% or 12 cases), parents believed they were not taken because they were not the biological children of the abductor.

### History of Family Violence

The survey asked questions which sought to learn about the abductor's behavior, as well as the nature of the abductor's relationship with the left-behind parent and abducted child. This included a series of questions which addressed family violence issues.

Seventy-nine left-behind parents (81.4%) answered that the abductor had been abusive toward them, and (57 or 59.4%) reported that the abductor was abusive or seriously neglectful toward the abducted child. Abuse and/or neglect toward both the left-behind parent *and* the abducted child was reported in 53 cases (55%).

The following tables show a breakdown of the extent and nature of the alleged family violence:

<b>Table 16: Type of alleged domestic violence perpetrated by abductor toward left-behind parent<sup>d</sup></b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Physical abuse</b>	38	49.4%
<b>Psychological abuse</b>	74	96.1%
<b>Sexual abuse</b>	13	16.9%

<sup>d</sup> Of the 79 cases in which domestic violence was alleged.

<b>Table 17: Type of alleged child abuse/neglect perpetrated by abductor toward abducted child<sup>c</sup></b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Physical abuse</b>	18	32.7%
<b>Psychological abuse</b>	41	74.5%
<b>Sexual abuse</b>	9	16.4%
<b>Serious neglect of child's needs</b>	25	45.5%

<sup>c</sup>Of the 57 cases in which child abuse and/or neglect was alleged.

Thirty-eight left-behind parents reported that they sought a restraining order in response to the alleged domestic violence, and 75.8% (25) of those who requested a restraining order were granted one. Most responding parents (59.6%) also indicated that they reported the child abuse and/or neglect to authorities prior to the abduction. An additional 7 (12.2%) reported the abuse or neglect after the abduction had occurred. For the remaining 16 cases, the alleged child abuse and/or neglect is still unreported to authorities.

Parents were also asked if the abductor had ever accused them of being neglectful, or psychologically, physically or sexually abusive toward their children. Fifty-seven parents (59%) reported that the abductor had accused them of neglect and/or abuse, and in 18 cases (32%) the abductor sought a restraining order *against the left-behind parent*. In 13 of these cases (41%), the restraining order was granted.

## Discussion

Even though most respondents reported that they were living apart from the abductor at the time of the abduction, a little less than half had been apart less than one year. This suggests that, in most cases, the separation between the left-behind parent and abductor was relatively recent. In 19.6% of the cases, the separation had not even occurred prior to the abduction.

At the time of the abduction, in most cases (42.1%) the child was living with the left-behind parent (i.e., the left-behind parent had physical custody of the child). In a little less than half of the cases, however, either both the left-behind parent and abductor had physical custody of the child (25.3%), or the abductor, alone, had physical custody (18.9%). Respondents also reported that in about half of these cases legal custody had yet to be determined or was being challenged by either the left-behind parent or abductor. (In 23.3%, the abduction occurred before custody proceedings were filed; in 24% the abduction occurred during the pendency of custody proceedings.) In these cases, it appears that the abductor acted before legal proceedings were brought, or chose not to await the outcome of the custody determination and instead opted to flee with the child. This time period may have been perceived as a "window" to leave without actually violating a final court order.

Respondents reported very high rates of domestic violence, and in half of the cases left-behind parents reported that both themselves and their children had been victimized by the abductor prior to the abduction. While in both categories (abuse toward left-behind parent and abuse/neglect toward child) the largest groups are those who felt psychologically abused by the abductor, rates of physical abuse and serious neglect of the child's needs are also quite high. Less than half of the left-behind parents sought a restraining order in response to the abuse, although most that did were granted one. This contrasts greatly with the number of restraining orders granted to the abductor as a result of alleged domestic violence perpetrated by the left-behind parent. In addition, most parents did report the child abuse to authorities prior to the abduction occurring, discounting concerns that such a report was an act of spite, or a strategy to gain an increased law enforcement response following the abduction.

Other studies have shown that family violence is a factor in many abducting families. Sagatun-Edwards (1996) found that 18.1% of abducting parents and 34% of left-behind parents alleged that the other parent was abusive, according to the district attorneys' records. Johnston (1994) identified the parent who has a fixed belief that child abuse has occurred, and support for that belief, as one of six risk profiles for abduction. Hegar and Grief (1993) found that domestic violence was present in 54% of their sample.

#### 4. PARENTS' FEARS OF ABDUCTION

##### Threats

About four-fifths (80.4% or 78) of the left-behind parents reported that, prior to the abduction, the abductor threatened that they would never see their children again. In addition, many parents reported threats to their lives or their children's lives:

<b>Table 18. Threats: Prior to the abduction, did the abductor ever threaten . . .<sup>f</sup></b>		
	<b>Frequency of response</b>	<b>Percent of total responding cases</b>
<b>. . . your life?</b>	50	59.5%
<b>. . . the life of your child?</b>	18	21.4%
<b>. . . anyone else's life?</b>	35	41.7%
<b>No threats made</b>	13	13.4%

<sup>f</sup>Total percentage exceeds 100% because some responded yes to more than one type of threat.

Seventy-eight percent of parents also reported that they were concerned an abduction might occur prior to its actually happening, and many told others of their concern. The chart below shows how seriously these concerns were taken by those who were told, according to the left-behind parent:

<b>Table 19. How seriously did those you told take your fears of an abduction?</b>				
	<b>Not at all seriously</b>	<b>Somewhat seriously</b>	<b>Moderately seriously</b>	<b>Very seriously</b>
<b>Family members (n=63)</b>	14.3%	15.9%	19.0%	50.8%
<b>Friends (n=55)</b>	9.1%	18.2%	20.0%	52.7%
<b>Your attorney (n=55)</b>	16.4%	20.0%	23.6%	40.0%
<b>Missing child org. (n=11)</b>	18.2%	18.2%	9.1%	54.5%
<b>Judge (n=46)</b>	37.0%	15.2%	15.2%	32.6%
<b>Prosecutor (n=19)</b>	31.6%	15.8%	5.3%	47.4%
<b>Law Enforcement (n=25)</b>	40.0%	16.0%	8.0%	36.0%
<b>Therapist/mental health professional (n=27)</b>	33.3%	18.5%	14.8%	33.3%

## Preventive Measures

In an attempt to prevent the abduction, about half of responding parents (48 or 50.5%) sought preventive measures. Those who did not seek preventive measures reported that no one had ever told them about preventive measures (58.8%); they were discouraged from taking preventive measures (15.1%), or failed to do so for other reasons (26.4%). Preventive measures which were sought and granted are outlined in the table below:

<b>Table 20: Preventive measures sought and granted</b>		
	<b>Percent of parents who sought measure</b>	<b>Percentage granted (n)</b>
<b>Sought custody order prior to abduction</b>	61.8%	16.7% (10)
<b>Sought custody order requiring posting of bond</b>	13.4%	53.8% (7)
<b>Sought custody order prohibiting removal of child from jurisdiction</b>	53.6%	17.3% (9)
<b>Sought supervised visitations</b>	34.0%	54.5% (18)
<b>Sought suspension/termination of visits between abductor and child</b>	15.4%	86.7% (13)
<b>Sought court order warning that breach of custody/visit order may subject violator to civil/criminal penalties</b>	29.8%	31.0% (9)
<b>Sought court-ordered passport restrictions</b>	22.6%	36.4% (8)
<b>Sought passport denial or revocation through US Dept. of State</b>	18.5%	33.3% (6)
<b>Sought passport denial or revocation through foreign embassy</b>	9.2%	66.7% (6)

In addition, some parents did the following as an effort to prevent the abduction:

- Tried to get control of the child's passport (37.1% of cases);
- Told school or day care not to let child leave with other parent (24.7% of cases);
- Had child photographed and/or fingerprinted (21.6% of cases);
- Gathered information about abduction from missing children's organizations, U.S. Department of State, etc. (13.4% of cases);
- Kept child from visiting other parent (4.1% of cases).



When asked about how other parents should be informed about ways to possibly prevent a parental abduction, respondents agreed with the following suggestions:

<b>Table 21: How should other parents be informed about ways to possibly prevent abductions?</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Parent education at time of divorce</b>	68	76.4%
<b>By their divorce attorneys</b>	61	68.5%
<b>Counseling prior to marriage between US citizen and foreign national</b>	60	67.4%
<b>Through public service announcements on TV, radio</b>	54	60.7%
<b>Parent education through the school system</b>	27	30.3%
<b>Educate grandparents through senior publications</b>	25	28.1%
<b>Hospitals when child is born</b>	19	21.3%

Several parents also made their own recommendations regarding how parental abductions could be prevented. These recommendations included:

- Child registration of couples with foreign citizenship;
- Both parents' permission for issuance of passport and/or foreign travel;
- Study abroad and fellowship programs could include an informational flyer in the standard packet on going abroad.

### Discussion

Both Johnston (1994) and Sagatun-Edwards (1996) conducted research to identify those factors which indicate conditions under which children may be at risk of parental abduction. They compared California families in which children had been abducted to families undergoing a very conflicting divorce and custody dispute involving high levels of litigation. Their findings indicate that many abductors share social factors, including low socio-economic status (including unemployment), being young parents (many never having been married), and having young children. In addition, a high number of abductors had a prior criminal arrest record (Sagatun-Edwards, 1996). Combinations of these social factors were found to increase the risk of parental abduction.

These studies also found that an abduction was more likely to occur if the abductor had no financial or emotional ties to the geographic area, and/or he or she had resources to help them survive in hiding from the left-behind parent or law enforcement (such as liquidated assets or help from others). Having financial or emotional support connections to another country (often the abductor's native country) also increase the risk of abduction. Some abductors took the children due to concerns about abuse or neglect, whether that concern was valid or not. The act of abduction was an attempt to "rescue" the child from the other parent (Johnston, 1994).

In the current study, an abduction threat was made before it occurred in the majority of cases. This likely accounts for the large number of parents who reported having fears that an abduction might occur, as well as the numerous preventive measures they sought. A surprisingly high number of abductors (21.4%) also reportedly threatened the life of the child, which would have only increased the left-behind parents' fears, particularly once the abduction had taken place.

The numbers on preventive measures are somewhat lower than those found by Girdner (1994b) in her survey of judges and lawyers. While a little over one-half of parents in the current study sought orders prohibiting the removal of the child from the jurisdiction, 87.2% of the attorneys surveyed by Girdner (1994b) did so.

Additionally, Girdner (1994b) also saw higher rates than the current study when it came to the following safeguards:

- supervised visitations (89.7% compared to 34% in the current study);
- suspension or termination of visits (80.8% compared to 15.4% in the current study);
- order giving warning that breach of custody or visitation provision may subject violator to civil and/or criminal penalties (58.9% compared to 29.8% in current study);
- court ordered passport restriction (55.2% compared to 22.6% in current study).

The percentage of cases in which these safeguards were granted also differed between the two studies. While two-thirds or more of these safeguards were granted in the Girdner (1994b) study, that was only true for one of the current study's safeguards: suspension or termination of supervised visits. Given the low number of cases in which it was sought, however, the numbers still differ greatly.

It appears that the concerns of left-behind parents regarding a possible abduction were not taken very seriously by many that they told. Missing children's organizations, family members and friends took these concerns most seriously, as did the left-behind parent's attorney. Many prosecutors also listened to these fears, as respondents reported that nearly half took these concerns "very seriously," although another third of respondents reported prosecutors as taking these concerns "not at all seriously." Law enforcement and judges had the worst response to parents' concerns. More law enforcement officials and judges were classified as taking fears "not at all seriously" than "very seriously."

A closer look at Table 19 shows an interesting pattern. In several categories (judge, prosecutor) over two-thirds of responses are split fairly evenly between not at all and very seriously. The remaining one-third are somewhere in between. Those not fitting this pattern may be seen as left-behind parents' allies (e.g., family, friend, attorney, missing child organization).

Two surprising findings were that one-third of respondents reported that therapists/ mental health professionals they told took the concerns "not at all seriously," as did 18.2% of missing children's organizations. This last finding is somewhat puzzling as prevention is a primary function of these organizations.

## 5. HOW ABDUCTION WAS ACCOMPLISHED

### Motivation to Abduct

The survey asked left-behind parents what they *believed* motivated the abductor to take the child or children. Parents were asked to rate the top three motivations from a list provided, or to write in what they believed was the motivation behind the abduction. The majority of responding parents saw the abduction as an act of revenge or spite against them:

<b>Table 22: Motivation to abduct (parents checked the top 3)<sup>g</sup></b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Did it for revenge or spite against you</b>	72	81.8%
<b>Unable to accept the end of your marriage.</b>	28	31.8%
<b>Upset or angry about recent or upcoming custody or visitation order</b>	27	30.4%
<b>Felt American society was a bad place for child to be raised</b>	20	22.7%
<b>Homesick for other country and/or family</b>	16	18.2%
<b>Upset or angry about recent or upcoming child support or alimony decision</b>	14	15.9%
<b>Believed you were a bad or unworthy parent</b>	10	11.4%
<b>Was frustrated with the legal process</b>	10	11.4%
<b>Disagreed on how you were raising your child (e.g., religion, discipline)</b>	8	9.1%
<b>Didn't feel there was enough access to child</b>	6	6.8%
<b>Wanted family in other country to see child</b>	5	5.7%
<b>Wanted to be an active parent, but didn't want to live in the U.S.</b>	4	4.5%
<b>Believed needed to protect the child from abuse</b>	1	1.1%

<sup>g</sup>There were 88 valid cases; 9 parents did not respond to this question.

About one-third of respondents included their own comments. They included:

- "Did not like my having a close relationship with my daughter."
- Abductor "[l]ost custody of first natural child; drugs and psychotic behavior; numerous suicide attempts."
- "Used religion . . . to justify his actions. Very jealous of my children's strong love . . . for me (did not want my influence on them)."
- Abductor "[w]anted to live in Mexico to marry someone else, but court order said [child could] not leave Okla[homa] without court's permission."
- "I got remarried to my current wife."
- "Feeling of loss of control over my actions."
- "Because I remarried and he wanted me back. When he found out I was pregnant he went crazy."
- Abductor was "[g]enerally an unhappy person -- unable to take care of himself--had to return to his mother/sisters."
- "I believe he justified his actions to himself in many ways. After eight (positive) years in the U.S., things weren't going well."
- Abductor had "financial problems."
- "Wanted to prove he could do it."
- "Wants me to suffer."

### Planning for the Abduction

After their child was missing, many left-behind parents learned that the abductor had taken a number of steps to prepare for the abduction. Every parent reported that the abductor had taken at least one planning action. Specific planning actions are outlined in the table below:

<b>Table 23: Actions taken by abductor to plan for the abduction</b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Saved money or waited for expected cash payment</b>	55	57.9%
<b>Gathered, destroyed or hid legal documents and records (birth certificates, school records)</b>	51	53.7%
<b>Liquidated assets (sold business, investments, etc.)</b>	50	52.6%
<b>Quit or changed jobs</b>	43	45.3%
<b>Applied for a visa or passport for the child from the U.S. State Department</b>	37	38.9%
<b>Moved residence</b>	34	35.8%
<b>Received visits from friends or family members from another country to assist the abductor</b>	32	33.7%
<b>Preparatory visit to country to which child was later abducted</b>	30	31.6%
<b>Applied for a visa or passport for the child from embassy or consulate of another country</b>	29	30.5%
<b>Kept the child late after a visit prior to actual abduction</b>	23	24.2%
<b>Changed religions or joined a sect or secret society</b>	11	11.6%

Twenty left-behind parents (21.1%) also reported that they believed the abductor had secretly involved the child in planning the abduction.

Fourteen parents reported "other" planning activities. Five of these involved the abductor informing others (friends, relatives) that they were planning to leave the country with the child. Two parents indicated that the abductor waited until graduation to leave with the child, and one indicated that the abductor had collected books about international child abduction before the incident. Another reported that the abductor had inquired about living conditions in the other country. One parent reported that the abductor selected the destination country specifically because it *had not* adopted the Hague Convention treaty. More extreme cases of planning included:

- Opening eight credit cards in the left-behind parent's name, charging \$15,000 worth of merchandise, and shipping purchases to other country;
- Selling the mobile home and having plastic surgery to conceal identity; and
- Telling the child that the left-behind parent was dying.

The vast majority of parents (91.7%) also reported that the abductor had received assistance to carry out the abduction or make it successful. This assistance came from the following sources:

<b>Table 24: Who provided assistance in the abduction?</b>		
	<b>Frequency</b>	<b>Percentage</b>
<b>Abductor's family</b>	72	80.8%
<b>Abductor's friends</b>	58	65.1%
<b>Abductor's attorney</b>	31	34.8%
<b>Members of abductor's ethnic community</b>	25	28.0%
<b>Foreign government officials or agencies</b>	24	26.9%
<b>Foreign consulate or embassy in U.S.</b>	22	24.7%
<b>Left-behind parent's attorney</b>	3	3.3%
<b>Left-behind parent's family</b>	1	1.1%

A few parents reported that they believe this support and assistance is still being received. Specific comments included:

- Abductor's "family is still refusing me to talk to my daughter; lie and tell me she is not there."
- "His friends/family trick me over the phone when I try to contact my children--play dumb, lie."
- "His friends . . . try to get me to release my hold on the children's passports being renewed."
- "The judge in Argentina does not want to have the responsibility of sending my daughter back to [the] U.S. . . .[doesn't] want to be in the middle."

### Discussion

Previous studies have found some abductors are motivated to abduct their child from the other parent in an effort to force a reconciliation, or to continue interaction with the left-behind parent (Agopian, 1981; Sagatun & Barrett, 1990). In other instances, Agopian (1981) and Sagatun and Barrett (1990) found that abductors may have a desire to blame, spite or punish the other parent. Abducting parents (particularly fathers) may fear losing legal custody or visitation rights, thereby facing a diminished parenting role with their child. Janvier, et al. (1990) and Sagatun and Barrett (1990) have also identified this as a motivation for abduction. In extreme cases, the abduction may come about as a result of paranoid delusions and personality disorders on the part of the abductor (Agopian, 1984; Johnston, 1994; Sagatun & Barrett, 1990), or total disregard for the law (Blomquist, 1992; Johnston, 1994; Kiser, 1987).

The motivation to abduct may also be an attempt to protect the child from a parent who is perceived to molest, abuse or neglect the child, and in some cases this may be a legitimate concern (Agopian, 1981; Sagatun & Barrett, 1990). Some abductors fear that the authorities may not take their concerns seriously (Sagatun-Edwards, 1996). In research conducted by the American Prosecutor's Research Institute (APRI), prosecutors who were surveyed reported that abducting parents made allegations of child abuse in 26.5% of their parental abduction cases. In 23 % of these cases allegations were made against the left-behind parent. In 17% of cases, both the abducting and left-behind parent made allegations of abuse (Klain, 1995). The numbers were similar for domestic violence allegations. About one-quarter of the cases included domestic violence allegations against the abductor, and another one-quarter contained allegations against the left-behind parent. About 11 % involved allegations by both parents. Overall, 30% of cases involved allegations of both child abuse and domestic violence (Klain, 1995).



In the current study, when examining what motivated the abductor to take the child, a few limitations should be highlighted. First, individuals involved in custodial disputes which do not result in abduction may share many of the same feelings and frustrations. The survey only gathered information about abductions which were successful and not on other custodial disputes. In addition, it should be noted that the information presented is based on the left-behind parent's perception of the abductor's motivation.

According to the left-behind parent, the deteriorated relationship between themselves and the abductor was reported to be the primary factor which motivated the abductor to take the child. Most saw the abduction as an act of revenge or spite in which the child was used as a tool to hurt the left-behind parent. For some, this was an extension of the abuse they had experienced while still living together with the abductor (see previous section). Some of the perceived motivations support the theory that the abductor wanted to return "home" where he or she would receive more emotional support from friends and family, in particular those who believed the abductor was homesick for the other country and/or family, or who wanted family in the other country to see the child. Yet others appeared to consider the child's well-being in the abduction, in particular those who believed the left-behind parent was a bad or unworthy parent, or who felt that American society was a bad place to raise a child. Only one parent was perceived as having taken the child to protect him or her from abuse. Perhaps most importantly, it appears that there is rarely only one motive for abduction. In nearly every case, it was a combination of anger at the left-behind parent, family connections, frustration with relationships and/or the courts, and a desire to be more involved with the child that resulted in the abduction.

The findings regarding motivation differ somewhat from those of Girdner's (1994b) survey of judges and attorneys. A far greater number of parents in the current study felt the abduction had been motivated by revenge or spite (81.8%) than did attorneys (51.3%) and judges (42.2%) in Girdner (1994b). This was also true for parents who felt the abductor was unable to accept the end of the marriage: 31.8% in the current study, compared to 19.3% of judges and 14.1% of attorneys in Girdner (1994b).

Alternatively, a larger number of judges and attorneys from the previous study felt that the abductor had been motivated by:

- recent or anticipated adverse custody order (50.6% of judges and 69.2% of attorneys, compared to 30.4% of parents in current study);
- frustration with the legal process (over 25% of judges and attorneys, compared to 11.4% of parents); and
- belief that the left-behind parent was bad or unworthy (over 25% of judges and attorneys, compared to 11.4% of parents).

In addition, about one-third of judges and attorneys surveyed by Girdner (1994b) believed the abduction was motivated by a desire to protect the child from abuse, while only one parent indicated this motivation in the current study.

Some respondents were able to identify the ways in which the abductor had planned for the abduction. Most of the identified planning actions indicate that, rather than a spur-of-the-moment act, the abduction was premeditated. Abductors prepared economically by saving money, waiting for IRS tax refunds, quitting or changing jobs, and liquidating their assets. In addition, they were thinking about longer-range plans, such as schooling for the abducted child by gathering legal documents and records such as birth certificates and school records. One-third each of those who reported planning actions indicated that the abductor received visits from friends or family members from another country prior to the abduction, and that the abductor made a preparatory visit to the country to which the child was later abducted. As nearly all left-behind parents believed that the abductor had received assistance to carry out the abduction or make it successful, usually from family or friends, it appears that in most cases the abductor did not act alone. Nearly one-quarter responded that the abductor had kept a child late after a visit prior to the actual abduction, perhaps to prevent the left-behind parent from immediately becoming concerned when the actual abduction occurred. In addition, one-fifth secretly involved the child in the planning of the abduction. These cases are particularly disturbing and suggest a high level of planning.

## 6. LOCATION AND RETURN OF CHILD AND ABDUCTOR

In over two-thirds of cases (72.2% or 70 cases), the left-behind parent reported that their child had been located. In just over half of these cases the child had been located within 6 months of the abduction. About one quarter of parents whose children had been located (24.2% or 16 cases) reported that the child's location had always been known to them.

<b>Table 25: How long after abduction was child located?<sup>h</sup></b>		
	<b>Number of cases</b>	<b>Percentage</b>
<b>Location always known</b>	16	24.2%
<b>Within 1 month of abduction</b>	8	12.1%
<b>1-3 months after abduction</b>	5	7.6%
<b>4-6 months after abduction</b>	9	13.6%
<b>7-12 months after abduction</b>	9	13.6%
<b>1-2 years after abduction</b>	8	12.1%
<b>2-3 years after abduction</b>	3	4.5%
<b>More than 3 years after abduction</b>	8	12.1%

<sup>h</sup> Four missing cases.

Over two-thirds of parents also reported that the abductor had been located (70.5% or 67 cases).

### Contact with Abductor and/or Child

A large number of parents (55 or 59.8%) reported that the abductor and/or their child contacted them at some point after the abduction, while they were still missing. How soon after the abduction this contact occurred and the type of contact made are outlined in the following tables:

<b>Table 26: How soon after the abduction were you contacted by the abductor and/or your child?</b>		
	<b>Frequency of response</b>	<b>Percent of Cases</b>
<b>Within 24 hours of abduction</b>	12	23.1%
<b>Between 2-7 days following abduction</b>	12	23.1%
<b>8-30 days following abduction</b>	5	9.6%
<b>1-3 months following abduction</b>	5	9.6%
<b>4-6 months following abduction</b>	6	11.5%
<b>Over 6 months following abduction</b>	12	23.1%

<b>Table 27: Type of contact<sup>i</sup></b>		
	<b>Frequency of response</b>	<b>Percent of cases</b>
<b>Contacted by letter</b>	17	31.5%
<b>Telephone contact</b>	45	83.3%
<b>Contacted through another person</b>	8	14.8%

<sup>i</sup> Respondents could answer more than 1 type of contact.

Nearly all parents who were contacted by the abductor and/or child (54 of 55 respondents) attempted to negotiate with the abductor to return the child. Twenty-nine (53.7%) reported trying to negotiate prior to taking legal action; 24 (44.4%) reported trying to negotiate prior to involving law enforcement.

Even if the exact location of the child was unknown during the abduction, many parents had some information about the child's whereabouts and with whom the child was living. Parents reported knowing the following about their child's location during the abduction:

<b>Table 28: Information known regarding child's location during abduction<sup>j</sup></b>	
	<b>Percent of Cases</b>
<b>Know or knew the country they are/were living in</b>	85.7%
<b>Know or knew the specific city/town they are/were living in</b>	74.0%
<b>Know or knew the address they are/were living at</b>	46.8%
<b>Other information</b>	22.1%

<sup>j</sup> Seventy-seven valid cases. Respondents could check more than one item so totals equal more than 100%.

Parents reported having the following information regarding with whom the child was living during the abduction:

<b>Table 29: With whom was or is your child living during the abduction?<sup>k</sup></b>	
	<b>Percent of Cases</b>
<b>Living with the abductor</b>	84.1%
<b>Living with abductor's family</b>	56.8%
<b>Living with abductor's friends</b>	10.2%
<b>Living with abductor's current spouse</b>	9.1%
<b>Other information about with whom child is/was living</b>	11.4%

<sup>k</sup> Eighty-eight valid cases. Respondents could answer more than one item so totals equal more than 100%.

Parents were asked to describe how the children were located. Some reported that law enforcement was instrumental:

- "We received a police report from France."
- "I learned from the FBI the country and general area."
- "With the assistance of [a] Senator . . . I received a welfare report from the embassy in Tegucigalpa confirming they are in Honduras. I do not have a specific city or address at this time."

- "After I reported my missing son to the police, they learned that he had purchased two tickets to Iran via London."

One parent reported being contacted by officials in the country:

- Seven months "... after [the] abduction ... I was contacted by ... an attorney in New Zealand that was appointed by the family court of New Zealand to represent my two children in Court, because their father filed an application for interim custody. I traveled to New Zealand and was there six days before warrants to pick them up were issued. As soon as [the] children were picked up, I was reunited with them."

The family of the abductor also provided assistance in some cases:

- "Abductor was always threatening to take my son to Turkey. After the abduction the abductor's sister told the Alabama court the abductor and my son were in Turkey."
- "My lawyer told my ex-husband's relatives about a tort suit for conspiracy. They revealed my ex-husband's hiding place."

Missing children's organizations provided valuable intervention in some cases:

- "Abductor's brother contacted by local police who had been advised by Vanished Children's Alliance. [Brother] called police and me (conference call) when family decided to disclose location."
- "Child Quest international had contacts in Uruguay and got Interpol involved. They located my child. Then my ex left Uruguay with my child to Argentina. FBI attachés in the country located them again."
- "The American Association for Lost Children got a hold of the abductor's parents' phone bills and also used someone pretending to be a daughter calling home and found out from their own mouths where he was."

The abductor also revealed the location:

- "He called and told me where he was. I also hired an investigator to try and locate an exact address, but was never able to get a complete confirmed address. Just a general area and possible streets. The family owns two homes and a business all in the same close area."
- "My ex-husband finally contacted me and told me where my daughter is."

In some cases, left-behind parents themselves were responsible for launching a multi-agency effort:

- "Subpoenaed abductor's phone records covering period prior to disappearance. Figured out phone numbers for family members, possible job search around the U.S. and then abroad with possible location of job choice. Contacted U.S. State Dept for assistance (filled out questionnaire). Contacted missing children's agencies and received tips/direction for tracking them down and advice on legal actions possible and necessary. State Department contacted embassies in three countries of possible destination. Embassy contacted [abductor's] family members with concern for children missing. His family contacted him. He called me (pretending he was just keeping in touch!)"
- "I traced it . . . myself -- thought he would go there as [had] family in Nigeria. I worked back in time and located car at airport. -- got a trace on tickets, etc. Most of the work was done by me and family friends. Except for the local city cop, law enforcement did nothing."
- "Obtained address and phone numbers from old letters between abductor and myself. Called aunt's house in Moscow -- abductor responded by showing up at U.S. embassy in Moscow--said she had plans to [return] in a few weeks. In a few weeks I called abductor's mother's house--abductor answered phone, would only speak in Russian language but I, of course, recognized her voice and the child's location was confirmed in my mind."

Another parent reported using local media:

- "I appeared on a local news broadcast. They showed a video of my son and photos of the father/abductor. I explained my situation. Three people called the TV station moments after the broadcast. They were all co-workers of the father/abductor at the same school where my son also attended kindergarten."

### Child Recovery

The number of cases in which the child had been recovered was much lower than the number located. The initial survey of parents indicated that children had been recovered in 42.7% of cases where the child's location was known. This made the overall recovery rate 30.9%. Follow-up with parents in 1997 indicated an additional 10 parents had since recovered their children, increasing the recovery rate to 41.2%. (See page 2-110 for more information on the follow-up.)

A little over half of the recovered children were returned within a year of the abduction:

<b>Table 30: How long after the abduction was the child returned?<sup>1</sup></b>		
	<b>Frequency of cases</b>	<b>Percentage</b>
<b>Within 1 month of abduction</b>	1	3.7%
<b>1-3 months after abduction</b>	2	7.4%
<b>4-6 months after abduction</b>	3	11.1%
<b>7-12 months after abduction</b>	8	29.6%
<b>1-2 years after abduction</b>	7	25.9%
<b>2-3 years after abduction</b>	3	11.1%
<b>More than 3 years after abduction</b>	3	11.1%

<sup>1</sup> Twenty-seven valid cases. Three respondents did not answer the question.

Eighty percent of parents whose children had been returned (24 cases) reported traveling abroad to pick up their child. Making this trip was not necessarily easy, however, and parents reported encountering the following barriers to picking up their child:

- Cost of plane ticket (60%)
- Having to obtain passport for self and/or child (40%)
- Difficulty traveling in other country (36%)
- Having to obtain visa for self (32%)
- Difficulty communicating in other country (28%)
- Difficulty getting time off of work (24%)
- Fear of leaving other children (8%)

Twenty-four percent of parents whose children had been recovered (6 cases) reported no barriers to picking up their children.

Respondents were asked to describe how the children were returned. Some wrote a lengthy description of the strategies they used to get agencies to assist in the recovery. Others only briefly described how the children were returned. Some examples of parents' descriptions are below.



Voluntary returns were reported by some respondents:

- "My child was returned through negotiations with my ex-wife's sisters, a California mediator, and myself. I agreed to drop charges if my daughter was returned. My daughter was brought to a court-appointed therapist's office."
- "[Abductor] needed money. I paid it through an escrow account that my friend who works for a bank set up."

In several cases, law enforcement provided assistance:

- "They arrived at JFK [airport], were separated by [law enforcement] from their father. Then I was called in a few minutes later to see them."
- "Picked up by Belize police, separated from the abductor and taken to U.S. embassy. I flew to Belize city and met ambassador who handed child over."
- "The county sheriff, another officer and the human services caseworker flew to country to pick-up the child. Caseworker delivered her to our door."
- "Mother and children picked up by Mexican immigration police cooperating with FBI (UFAP)."
- "I dropped state and federal . . . felony charges on mother to get her to return (fly back) to U.S. with child--after 10 days in U.S.A. and with the help of private investigators I located both. Attorney general's office and [Delaware] state police called her up at friend's residence and told her to hand over child to me the next day or they would reinstate charges--she handed over child the next day in her lawyer's office with [district attorney] and state police present. My current female friend and my mother delivered my daughter to me at my lawyer's office."

Mercenaries/rescuers were utilized by some parents, although in most cases these descriptions were brief:

- "I went to Egypt with an Egyptian who had connections there. I paid him \$20,000. We both took my child out of school one day and two days later smuggled him on a plane to New York from Cairo."
- "Through a complicated counter-abduction in which I participated."

Courts were involved in many cases:

- "A Colombian court awarded me visits 20 months after the abduction, 6 months after locating my son. Three months later I was awarded temporary custody in Colombia. I lived there awaiting a final custody decision seven months later, and a right to leave the country--another two months."
- "The family court [in France] ordered that the child be returned to the U.S. based on the best interest of the child. The judge's desire was that the child should return with the abductor/mother and gave her some weeks to come back to court with a timely and orderly plan for return. Instead, the mother engaged in interminable legal delays. Ultimately, the judge ordered that I take custody of the child in order to return him to the U.S."
- "I went to New Zealand and had a custody hearing. They gave me custody of both children. The Sacramento County Child Abduction unit had an investigator go to New Zealand with me--they took care of all airfare, car rental and attorney for me in New Zealand."
- "Wife voluntarily returned [child] after I obtained custody . . . in El Salvador. I obtained passport for him and we returned by U.S. carrier."
- "In the [foreign] court room. After [I won] the custody case and appeal, the abductor ran away with my baby. I spoke at press conferences, had the case publicized and then the abductor filed a writ against me . . . the judge was forced not to take bribes from him (by the newspaper, etc.) and ordered the return of my child."

The following respondents described the intervention of officials in non-Hague countries:

- "Through the intervention of NCMEC, Interpol reported the children's location to me. (The people at the State Department had told me they couldn't involve Interpol). I suspected the children were where they were because it was the family home [that] I had visited before, even though I had made trips to Morocco after the abduction and did not find them there. I finally got a lawyer in Morocco who was able to get me a court order (with the intervention of the Moroccan Ministry of Justice). Two Moroccan plain clothes police were sent to bring my ex-husband in . . . they accompanied me to the children's school where I saw my children for the first time in three years."

- “[T]he U.S. consulate requested entrance and exit visa information on my child and the abductor from the Syrian Minister of Justice. He said my daughter had entered Syria, but left [for Saudi Arabia] with the abductor.” Knowing that the abductor's only trained vocation was as a medical lab technician, the left-behind parent called all hospitals in Ryadjh and learned that they were both living there. She then went to the Saudi Arabian Embassy and “begged [them] to expel the abductor and child from the country.” One week later the abductor and child arrived in Syria, “where he was immediately arrested at the airport--much to his surprise--for kidnaping. The Judge ordered the abductor to disclose [the] child's whereabouts.” (The child had gone home with a relative at the time of the abductor's arrest.) The parent reported that this was a “joint effort . . . by Saudi Consulate in Washington, D.C., State Department, U.S embassies in Saudi Arabia and Syria, as well as [a] Syrian attorney, [the] Syrian Minister of Interior, Syrian Minister of Justice, and Syrian Judge. [The] abductor is currently in a Syrian prison on charges for kidnapping. Child is being held by family members until final paperwork is done so [she] can recover [her] child.”

In some cases, the children themselves were instrumental in their return:

- "My son contacted me secretly when his father cut me off from speaking with him on the phone. We arranged for his secret escape from Mexico . . ."
- "My children ran away from their father . . . Friends in Syria protected them for a month until I got there. We hid together for another month until my US attorney found a way out for us."

### Searching Techniques

Parents were asked about the resources and strategies they, or others on their behalf, used to locate and/or recover their children. All parents used at least one of the following strategies:

- 92.8% (90) contacted family and friends;
- 62.9% (61) traced telephone bills, credit card statements;
- 60.8% (59) made and distributed missing child posters;
- 55.7% (54) spoke with reporters from TV, radio, magazines and newspapers;
- 54.6% (53) contacted and/or visited members of the U.S. Congress;
- 40.2% (39) used mediation services from missing child organizations; and
- 15.5% (15) held fundraisers in the community.

Based on their experiences as searching parents, respondents were asked to describe any particularly effective search techniques that they have used or heard of that they believed other searching parents should know about. Some parents recommended specific organizations or agencies that they felt were helpful in the search process (e.g., NCMEC, Minnesota Missing Children, Child Quest International, the FBI or Interpol). Others recommended making personal contact with political leaders. Five different parents recommended using international television coverage, including Univision, a Spanish language television network based in the U.S. Maintaining ongoing contact with law enforcement was another recommendation:

- "Develop relationship with law enforcement officer who takes a personal concern in welfare/return of children."

Several parents recommended putting pressure on those close to the abductor to help in location and recovery:

- "Sue the friends and relatives, civilly. Sting the relatives. Direct mail campaign to all relatives, friends, neighbors--have up posters in their neighborhood, make their lives impacted by the abduction."
- "I told the abductor's friend that I would call his employer and tell that he was aiding and abetting in illegal activity (i.e., international abduction)."
- "Watched home of friends and family; checked with stepdaughter's school about attendance; distributed missing child posters with photo of abductor to neighbors and abductor's family."
- One parent stated that she had "call[ed the] family in Iran [and] through interpreters pleaded, begged for information."

One parent recommended using a form of reverse psychology with the abductor:

- "Act cool. Pretend that you're as stupid as you once were. Make abductor believe that he/she is in complete control over you and child. Don't act like you are going to recover your child."

Other comments included:

- "Went through [abductor's] garbage."
- "Use a private investigator that specializes in parental abduction."

- "Telephone bills are a good tool to use. They were the only source that was effective. Even though the parents of the abductor may not give information, it will slip out sometimes. It is good to keep contact with them."
- "UFAP [Unlawful Flight to Avoid Prosecution] warrant. If you don't have it, the FBI won't help to locate. It becomes ineffective when you find out your country won't do [anything] to help you get them back especially if they are in a country that is not under Hague convention."
- "Get in contact with someone who has gone through same thing - they know what works."

Parents also stated that they had utilized school-related resources:

- "Truant officer at children's school could get information from abductor's job and apartment before I legally could. State Department and embassy officials calling his family, with concern for children's whereabouts; family became frightened, didn't know children were "missing" and put pressure on abductor to contact me. His phone records made sequence of events very clear, and tracking him down easy."
 

A mixture of resources was listed by others:
- "Rely on self--think, think, think. Attempt all avenues of search. Keep good notes--organize search--make friends with everybody. Read and explore all possibilities--use NCMEC book on abduction as a guide."
- "Success and progress began when I put my energies into the foreign legal/diplomatic system. Get UFAP; hire foreign attorney; parent must coordinate their own recovery. Find out what each agency can do, then incorporate that asset into your plan of action. NETWORK-NETWORK-NETWORK-NETWORK-NETWORK!"
- "Wrote to United Nations and many letters to our President until I got a phone call from the White House."
- "Review mail for abductor's last known address--current mail for them may be sent there by mistake. That's how [I] determined they are in Israel."
- "We hired a court appointed process server to serve abductor a summons to appear in court. He traveled to Mexico to serve her. Dropped felony charge so she would return to U.S. (through mediation). Dropping charges was a mistake. She was treated as if she had done nothing wrong. I was afraid if I didn't drop (felony) charges, I would never see my child."

## Discussion

While most respondents were aware of the child's location, only about half of them actually knew the address at which their child was living. Most knew only the country, or the specific city in which they were located. Information which is known regarding the child's and abductor's location after the abduction reinforces that the abductor's family has provided some support. Over half reported that they believed the child was living with the abductor's family.

Unlike the findings of NISMART (Finkelhor, et al., 1990) and other studies, far fewer children in this study had been recovered than had been located. NISMART, which looked at a nationally representative sample which included both domestic and international abductions, found that the average duration of abduction was about eleven days. About 70% of the NISMART abductions had been resolved in one week (Plass, Finkelhor and Hotaling, 1995). Forehand, Long, Zogg and Parish (1989) showed that in most of the cases they reviewed children had been gone between three and seven months. The length of abductions described in other literature range from several days (Schetky and Haller, 1983) to three years (Terr, 1983).

In the current study, of those children who had been recovered, all but 22.2% had been separated from the left-behind parent for at least six months. Over half of those located were not even located by the left-behind parent until four or more months after the abduction.

The research which exists on the trauma suffered by children who have been parentally abducted clearly shows that a long period of separation from the left-behind parent is particularly damaging. Agopian's (1984) research found that the length of separation from the left-behind parent greatly influenced the emotional impact on the abducted child. Generally, children held for shorter periods (less than a few weeks) did not give up the hope of being reunited with the other parent, and as a result did not develop an intense loyalty to the abducting parent. In some ways, they were able to view the experience as a type of "adventure."

Victims of long-term abductions, however, fared much worse. They were often deceived by the abducting parent, and frequently moved to avoid being located. This nomadic, unstable lifestyle made it difficult for children to make friends and settle into school, if they attended at all. Over time, younger children could not easily remember the left-behind parent, which had serious repercussions when they were reunited. Older children felt angry and confused by the behavior of both parents--the abductor for keeping the child away from the other parent and the left-behind parent for failing to rescue them (Agopian, 1984).

Terr's (1983) study reported on a sample of eighteen children seen for psychiatric evaluations following recoveries from abductions (or after being threatened with abduction and/or unsuccessfully abducted). Nearly all of the children (sixteen of eighteen) suffered emotionally from the experience. Their symptoms included grief and rage toward the left-behind parent, as well as suffering from "mental indoctrination" perpetrated by the abducting parent. Likewise, another study of a sample of 104 family abductions drawn from National Center on

Missing and Exploited Children (NCMEC) cases revealed that over 50% of the recovered children experienced symptoms of emotional distress as a result of the abduction, including anxiety, eating problems, and nightmares (Hatcher, Barton & Brooks, 1992).

The NISMART study (Finkelhor, et al., 1990) found that in 40% of *all* cases and 52% percent of "policy-focal" cases, left-behind parents believed that their children had been harmed by the abduction; 17 % of these parents considered this harm to be "serious." In 5% of the cases, parents reported that their child had been physically abused during the abduction (Finkelhor, et al., 1990).

In addition, Senior, Gladstone and Nurcombe (1982) reported that recovered children often suffered from uncontrollable crying and mood swings, loss of bladder/bowel control, eating and sleep disturbances, aggressive behavior, and fearfulness. Other reports have documented abduction trauma, such as difficulty trusting other people, withdrawal, poor peer relations, regression, thumb sucking, and clinging behavior (Schetky & Haller, 1983); a distrust of authority figures and relatives, and a fear of personal attachments (Agopian 1984); nightmares, anger and resentment, guilt, and relationship problems in adulthood (Noble & Palmer, 1984).

It is likely that children who are victims of international abduction may be damaged further, especially if they are required to adapt to different norms, values and even learn a different language.

For the current study, of those cases in which children had been returned, nearly all respondents reported traveling to another country to pick up their child, although most faced barriers to accomplishing this task. In many cases, once the child had been located and recovered (by law enforcement or other officials), parents who wished to travel to pick up their child had to do so immediately. Getting an affordable plane ticket and passport quickly may be very difficult. In addition, some parents reported being fearful of making the trip, either due to difficulties in traveling or communicating in the other country or concerns about safely leaving their other children in the U.S.

Childrens' recovery took many forms. Courts (both Hague and non-Hague) were involved in some cases; law enforcement or mercenaries in others. Some cases resulted in a voluntary return by the abductor or in the children directly, usually secretly, contacting the left-behind parent.

## 7. ARREST AND PROSECUTION OF ABDUCTOR

### Criminal and Civil Law

All states have statutes that make parental abduction a crime. Usually referred to as "criminal custodial interference" statutes, these laws vary from state to state. Many states only consider parental abduction to be a felony if the child is taken across state lines. Some state criminal laws do not extend to abductions prior to the issuance of custody orders, or abductions by joint or sole custodial parents.

The federal Missing Children Act of 1982 requires the Federal Bureau of Investigation (FBI) to enter missing children into the National Crime Information Center (NCIC), a computer database which offers law enforcement agencies nationwide access to information about missing persons.

The federal Parental Kidnapping Prevention Act of 1980 (PKPA), which gives jurisdictional priority to the child's home state in child custody cases where conflicts arise between two states, is primarily a civil remedy. However, the PKPA also extended the Federal Fugitive Felon Act to cases in which a child had been taken out of state where that act was considered a felony, thus enabling the FBI to investigate. Another important civil remedy which exists to combat parental abduction is state enactments of the Uniform Child Custody Jurisdiction Act (UCCJA), a statute which determines when a court has jurisdiction over a child custody case and attempts to prevent the occurrence of simultaneous proceedings in two different states.<sup>3</sup>

The Hague Convention on the Civil Aspects of International Child Abduction, ratified by the United States in 1988, is an international treaty in effect in countries which serves to simplify and expedite the return process when children have been abducted between party countries. In 1993, the United States passed the International Parental Kidnapping Crime Act, making the abduction or retention of a child from the U.S. a federal felony.

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<sup>3</sup>The Uniform Child Custody Jurisdiction and Enforcement Act was promulgated by the National Council of Commissioners on Uniform State Laws to replace the UCCJA. As of December 1, 1999, the Uniform Child Custody Jurisdiction Enforcement Act is in effect in 15 states.



## Criminal Court and Prosecutors

The criminalization of parental abduction at both federal and state levels has resulted in changes not only in law enforcement's, but in criminal court and prosecutor's handling of these cases. Left-behind parents seeking to recover their children generally had to do so without help from law enforcement agencies. Additionally, even though civil courts had the authority to impose civil sanctions on parents who violated their court orders, they apparently rarely did so (Blomquist, 1992).

Few jurisdictions have had much experience in prosecuting cases of parental abduction. A nationwide survey of 74 prosecutor's offices conducted by the American Prosecutor's Research Institute (APRI) indicated that 78% of respondents handle only one to five parental abduction cases every year; 90.3% handle between one and twenty per year (Klain, 1995). A much smaller number (4.2%) handle more than 100 cases each year. Just one in twenty-five prosecutors offices in the country have specialized parental abduction units. Most (57.5%) parental abduction cases are handled by non-specialists; or by one or several designated attorneys. The rest are handled by domestic violence, family crimes, special assault or child abuse units (Klain, 1995).

Of the 43 incidents of parental abduction<sup>4</sup> reviewed by Sagatun and Barrett (1990), criminal proceedings were instituted in 58% of cases (67% of cases committed by mother; 33% committed by father); with a warrant being issued in 52%. In 69% of cases in which a warrant was issued, arrests were made.

If a criminal offense of parental kidnapping was committed under state law, over 40% (15) of the state missing child clearinghouses surveyed by Girdner (1994c) reported that local prosecutors' offices would be involved in locating the child, although only two clearinghouse indicated that prosecutors routinely obtain pick-up orders.

A survey of law enforcement agencies and prosecutors found that in 1992 about 15% of family abduction cases reported to police resulted in arrest (Sedlack, Broadhurst, Altenbernd, Gragg & Wells, 1996).

Prosecutors report formally opening about 15,000 parental abduction cases, indicating that these cases reach prosecutor's offices by routes other than law enforcement. Twenty-three percent (3,500) of cases opened by prosecutors resulted in charges being filed. Just under one-half resulted in a conviction (Sedlack, et.al., 1996).

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<sup>4</sup>These were cases from a California family court services agency from 1983 to 1987.

## Criminal Charges

In the current study, parents reported that criminal charges had been filed:

- against the abductor in 77.3% of cases;
- against both the abductor and an accomplice in 4.1% of cases.

The type of charges filed<sup>5</sup> included:

- felony charges (87.0%)
- misdemeanor charges (5.2%)
- combination of felony and misdemeanor charges (7.8%).

Twelve cases (15.5%) resulted in arrest. Seven were abductions to Hague countries, five were to non-Hague countries.

For those cases in which charges had been filed, respondents were asked to indicate what had happened in the case. The flow chart on page 53 illustrates what happened to these cases. Five cases resulted in convictions. Brief summaries of these cases are below.

In all of the following cases, felony kidnapping charges had been issued by the jurisdiction from which the child was abducted. All left-behind parents also reported having a UFAP (Unlawful Flight to Avoid Prosecution) warrant against the abductor.

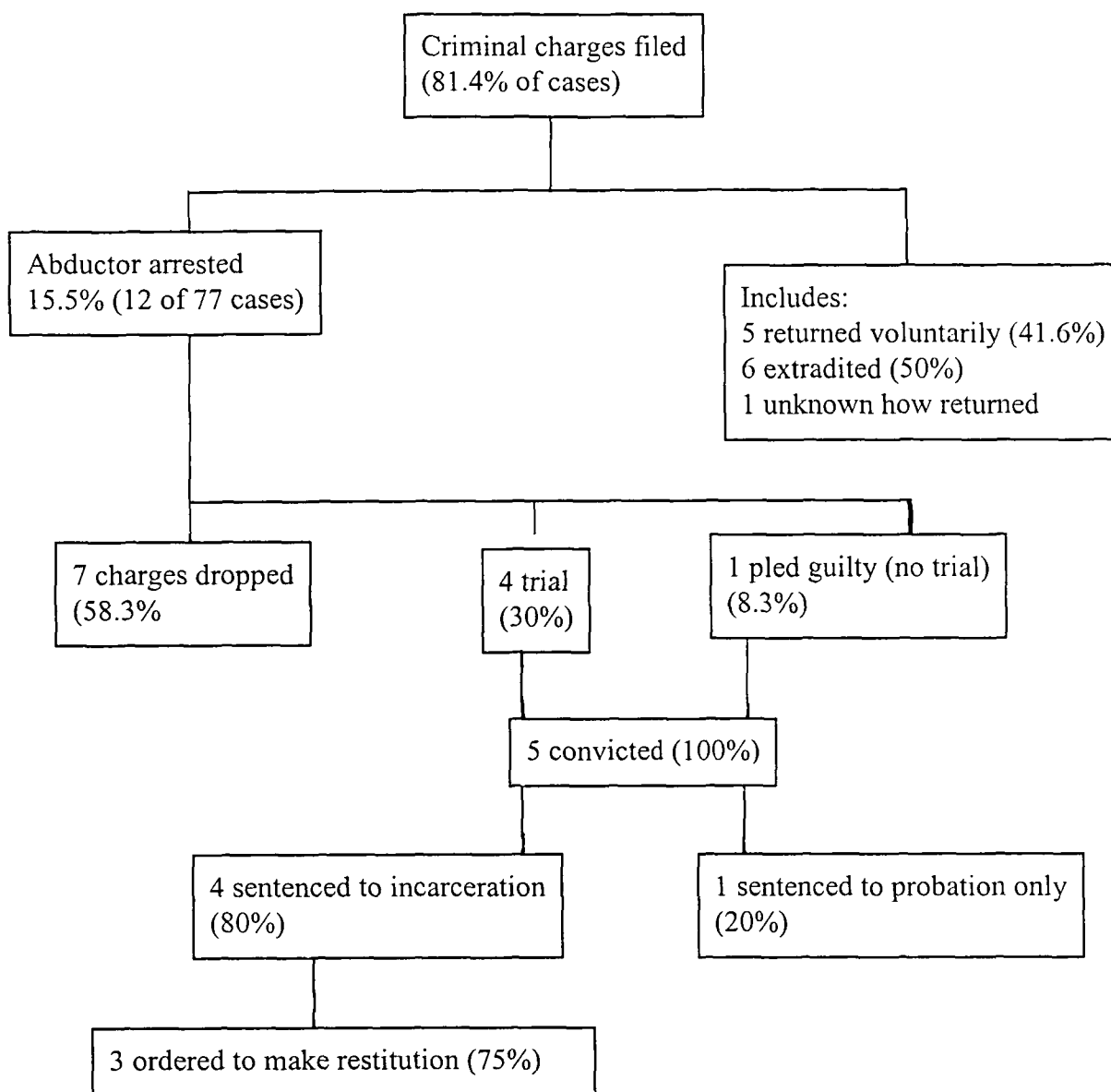
- Case 1. The abducting mother took her 2 children (both girls, ages 11 months and about 2.5 years) to Iran from California in 1989. The left-behind parent located the abductor in the United Kingdom, and submitted a Hague application for the return of the children, who were not located. The abductor was apprehended, however, and charged with parental kidnapping, contempt, and passport fraud. She later pled guilty and was convicted and incarcerated. At the time the survey was conducted, the children had not yet been recovered but were living in Iran with their aunt.

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<sup>5</sup>Note: Twenty parents did not respond to this question, 18 of whom had indicated in previous question that no charges were filed.

- Case 2. The abductor in this case was the child's father, a U.S. citizen with a history of domestic violence who took his 2½ year old daughter to Mexico from Minnesota. The left-behind parent suspected they were in Mexico, and received information from the abductor's family regarding telephone calls from Mexico which verified the location. The left-behind parent sent numerous photographs and flyers to law enforcement authorities in Mexico, and then filed a Hague application. She was awaiting the judge's decision when police officers in Mexico spotted the abductor and child in Guadalajara. The abductor was arrested on illegal immigration charges, and the child was put in the care of child protective services (CPS) in Mexico. CPS then contacted the left-behind parent in the U.S. who traveled to Mexico to pick the child up. The abductor was detained until he could be extradited to Minnesota where he was tried for custodial interference, convicted, incarcerated and ordered to pay restitution.
  
- Case 3. The child's father, a U.S. citizen, abducted his 5 year old son from Texas to Belize in 1991. The left-behind mother did not know the location of the child. The child's photo was shown on a local television station as part of a missing children's program, and two individuals called the station to report the child's whereabouts. The FBI was notified. The abductor was arrested by Belize police, and the child was taken to the U.S. Embassy. The left-behind parent was notified of her son's whereabouts by the U.S. Department of State, and she traveled down to Belize to recover him from the U.S. Ambassador. The abductor was extradited to the U.S., tried on parental kidnapping charges, convicted and placed on probation.
  
- Case 4. The abducting mother took the child (daughter, 3 years old) to France from California in 1992. The left-behind father located the mother in Spain and she was subsequently arrested by the Spanish police. A Spanish court awarded custody of the child to the left-behind father who returned to California with the child. The abductor also returned to the state voluntarily, where she stood trial and was convicted. The abductor was incarcerated and ordered to make restitution.
  
- Case 5. The abductor, an Algerian citizen, took his daughter (age 6) and son (age 3) from Indiana to Algeria in 1991. The left-behind mother reports that the children were returned "through a complicated counter-abduction in which [she] participated." The abductor returned to the U.S. voluntarily, was arrested and tried, and sentenced to incarceration and ordered to make restitution.

**Chart A: Flow Chart of Criminal Charges and Arrests**



## Discussion

Even though the overwhelming majority of abductors in the current study had felony criminal charges filed against them, very few have faced the consequences. Only 15.5% of those who had charges filed against them were even arrested, and in most cases the charges were subsequently dropped. Dropping charges was a strategy used by prosecutors and law enforcement to negotiate a voluntary return of the child. Of the remaining five cases which were prosecuted, four resulted in a trial and one resulted in the abductor pleading guilty to charges with no trial. All five of these abductors were convicted.

When reviewing the cases resulting in conviction, no difference is indicated between Hague and non-Hague countries, or whether the abductor was male or female. Perhaps the common factor in all five cases is the young age of the child -- 11 months to six years. All of these cases also indicated international cooperation among law enforcement agencies.

## 8. THE COSTS OF SEARCH AND RECOVERY

### Left-behind Parents

Greif and Hegar (1991) surveyed left-behind parents registered with a missing child organization and learned that, like their children, they experienced feelings of loss, rage, and impaired sleep following the abduction. Half reported feelings of loneliness, fear, loss of appetite or severe depression. Of this group, slightly more than 50% sought professional help in coping with the situation. One quarter of the parents were treated for depression and one quarter were treated for anxiety and other problems.

Moreover, an abduction of one's child can have a devastating effect upon the economic life of the left-behind parent, which can in turn effect their level of anxiety. Janvier, et al. (1990) found that the mean cost of searching for a child was over \$8,000 in domestic cases and more than \$27,000 in international cases. Hatcher and Brooks (1994) report that the highest percentage (34.6%) of left-behind parents (mainly in interstate cases) interviewed spent between \$1,001 and \$5,000 on legal fees during the search. The majority of left-behind parents (88.5%) did not receive money for restitution, damages or costs.

Forehand, Long, Zogg and Parish (1989) were not surprised when parents reported that their levels of psychological disturbance were high during the period the child was missing, and reduced somewhat once the child was recovered. However, the stress and trauma of the experience did not necessarily end when the child was recovered. Many parents in this study related that their psychological distress was higher after reunification with their children than it had been prior to the abduction. In a different study, Hatcher and Brooks (1994) found that nearly three-fourths (73.1%) of the left-behind parents surveyed related having concerns that their child would be re-abducted.<sup>6</sup>

### Financial Cost of Abduction

About half of the responding parents in the current study reported the financial cost of the abduction; specifically the amount of money they had spent in the search for their child. The mean total amount spent since the abduction had occurred was \$61,238, with a median amount of \$33,500.

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<sup>6</sup>The sample for this study was based on random sampling of NCMEC's cases. Many parents in the original random sample could not be located. Some of these parents may have moved to prevent the abductor from finding them.

A statistically significant relationship between the parent's income and how much money was spent was noted. For example, the least total amount (\$10,000) was spent by a responding parent whose annual income was under \$15,000. One parent who reported spending over \$250,000 listed an annual income of \$55,000 or over (the highest category). In addition, 84% of those who earned between \$25,000 and \$44,999 per year spent between \$20,000 and \$40,000 on the abduction search and recovery effort. Data analysis also showed that over half of parents reported spending as much or more than their annual incomes.

Parents were asked to estimate the amount of money spent in a number of different cost categories. The following table outlines information entered by parents:

<b>Table 31: Amount of money spent in search for child<sup>m</sup></b>			
<b>CATEGORY</b>	<b>Mean</b>	<b>Median</b>	<b>Range</b>
Attorney hired in U.S. <sup>n</sup> (n=27)	\$25,724.	\$12,000.	\$50. - \$200,000.
Attorney hired in other country <sup>o</sup> (n=28)	4,508.	3,000.	\$100. - \$30,000.
Court costs (U.S. & other country) (n=9)	3,388.	2,000.	\$200. - \$10,000.
Other legal costs (n=18)	2,397.	1,250.	\$100. - \$10,000.
Private investigator <sup>p</sup> (n=39)	3,987.	2,000.	\$200. - \$40,000.
Rescuer/Mercenary <sup>q</sup> (n=9)	33,111.	10,000.	\$3,000. - \$117,000.
Travel costs (n=60)	4,463.	3,250.	\$600. - \$20,000.
Communication costs (n=22)	11,436.	8,500.	\$100. - \$100,000.
Therapy or counseling (n=5)	5,660.	3,000.	\$100. - \$15,000.
Other costs (n=13)	34,784.	7,000.	\$500. - \$300,000.
Estimated total spent (n=50)	\$61,238.	\$33,500.	\$10,000. - \$270,000.

<sup>m</sup> Not all respondents answered this question. Additionally, some only answered the total amount spent and did not break the costs down into the different categories. N indicates the number of respondents who answered this question for each category.

<sup>n</sup> 32.1% of those who utilized an attorney in the U.S. answered this question.

<sup>o</sup> 52.8% of those who utilized an attorney in the foreign country answered this question.

<sup>p</sup> 72.2% of those who utilized a private investigator answered this question.

<sup>q</sup> 42.8% of those who utilized a rescuer/mercenary answered this question.

Other costs listed by parents included psychological testing, expert testimony, lost time or loss of job (employment income), the cost of authenticating documents, fees for psychics, and bribes.

Parents used a number of different sources to raise the funds needed:

- Own savings and earnings (90.1%)
- Credit cards (40.7%)
- Loans from extended family and friends (40.7%)
- Gifts from extended family and friends (38.5%)
- Bank/financial institution loans (including mortgages or equity loans) (18.7%)
- Fundraising events (16.5%)
- Other funding sources (20.9%), including:
  - "Cashed in life insurance policies, . . . 401Ks and annuities . . . [and] my life insurance, sold everything I had."
  - "Since my child was abducted, I've worked two jobs to save money for the moment when I need to spend to get him back."
  - "Received some public assistance when funds were depleted."
  - "Child's inheritance and [selling] grandmother's home."
  - [New spouse's] "earnings and savings."

### Emotional Cost

Being the parent of a child who has been abducted can be extremely upsetting and frustrating. Parents in the current study were asked to report about the resources they have utilized to cope with the stress of their children being abducted. Over four-fifths reported turning to friends and family for emotional support:



<b>Table 32: Where have you turned for help in coping with the stress of your child being abducted?</b>		
	<b>Frequency</b>	<b>Percent of cases</b>
<b>Informal emotional support from friends and family</b>	77	84.6%
<b>Books and other reading material</b>	56	61.5%
<b>Religion</b>	39	42.9%
<b>Counseling</b>	35	38.5%
<b>Therapy</b>	21	23.1%
<b>Prescription drugs</b>	18	19.8%
<b>Support groups</b>	17	18.7%
<b>Over-the-counter drugs</b>	9	9.9%

Three parents stated that they relied on themselves, one noting that she knew she was "doing everything I could to find them." Another parent reported that the abductor "wanted to kill me and expected I would kill myself if he took the children, I would NOT give him the satisfaction." Several parents reported that missing children organizations were supportive, helping in "keeping my hope alive." The stress takes its toll, however, and one parent wrote that "All of the above have been temporary. Friends and family get tired of hearing about it. The only hope is in God. In his hands. Nobody else really cares." Unfortunately, not all parents relied on positive supports. One reported turning to "alcohol--leading to A.A."

### Discussion

As the search and recovery process is largely managed in the U.S. by the left-behind parent, its success may depend upon a combination of personal and external factors, such as the emotional and physical health of the parent, and the economic, social and legal resources which the parent can mobilize in the search.

For many of the parents in the current study, the costs of the search and recovery of their child, both emotionally and financially, has been staggering. For some parents, the experience has caused them to mortgage their homes, take out large loans, even file for bankruptcy. The category in which most respondents spent money was in travel costs, although the most expensive category was clearly rescuer/mercenary. In general, left-behind parents who responded to questions about the financial cost of abduction spent an average of over \$30,000 in the search and recovery of their children.

Just as family and friends appeared to offer abductors a great deal of support in their actions, most left-behind parents report turning to their own families and friends for informal emotional support. Nearly half turned to their religion for guidance and support. Others sought help in therapy or counseling, and about one-fifth relied on prescription drugs for assistance.

Even in those cases considered “successful” (e.g., in which the child was recovered) respondents reported high levels of frustration and anxiety, and many spent large sums of money to facilitate the return.

## 9. OBSTACLES TO RECOVERY

### Obstacles Identified by Parents

In the current study, parents faced numerous obstacles in the search and recovery of their children. In order to identify the greatest and most common obstacles, the survey asked parents to rate a list of obstacles in terms of the level of difficulty they had caused in their attempts to recover the child. Respondents individually rated obstacles using a scale of 1 to 10 (with 1 indicating the *highest level of difficulty*). In assembling the data, the following table shows how frequently these obstacles were identified by parents (regardless of rating). Within each obstacle, the table also shows the percentage of respondents that identified the obstacle as having:

- the *highest* level of difficulty (rated 1); and
- a high level of difficulty (rated 1-3).

<b>Table 33: Obstacles encountered by parents in the search and recovery of their child<sup>†</sup></b>			
	How often identified as an obstacle	Percentage with highest level of difficulty (rated 1)	Percentage with high level of difficulty (rated 1-3)
Laws of other countries	74.0%	56.1%	71.9%
Difficulty working with government agencies/officials in foreign country	63.6%	44.9%	67.3%
INS failure to act regarding abductor's immigration status	42.8%	36.4%	66.7%
Lax attitude of law enforcement	72.7%	41.1%	66.1%
Ease of exiting U.S.	66.2%	52.9%	62.7%
Judge's lack of experience in international abduction cases	51.9%	42.5%	62.5%
Lack of sufficient funds	79.2%	49.2%	60.7%
Airlines failed to release information	48.0%	40.5%	56.8%
Lack of cooperation from foreign embassy or consulate in US	59.7%	23.9%	54.3%
American laws	75.3%	34.5%	53.4%
Federal law enforcement (FBI)	59.7%	37.0%	52.2%
Lack of uniform definition of abduction	61.0%	21.3%	51.1%
State/local law enforcement	68.8%	37.7%	50.9%
Lack of State Department communication	70.1%	25.9%	46.3%
Prosecutor's office	66.2%	29.4%	41.2%
Lack of cooperation from US embassy or consulate in foreign country	61.0%	19.1%	40.4%
Difficulty getting legal repres.	55.8%	20.9%	37.2%
Difficulties getting law enforcement to enter children into NCIC	64.9%	20.0%	36.0%
Lack of time	61.0%	25.5%	34.0%
Difficulties with missing children's organization	54.5%	11.9%	21.4%

<sup>†</sup> Based on 77 valid responses.

Parents identified a number of other obstacles. Three parents each identified language barriers and the abductor's family members as obstacles. One parent stated that there was "no immediate information on parental kidnapping available; [in particular] . . . no national legal assistance for international issues or information on how to get it." Another respondent stated that "the parent[s] themselves are an obstacle through their ignorance of the law, inexperience with politics, and naivete concerning our judicial system." One parent believed that her "unwillingness to martyr myself" acted as an obstacle in her case.

A number of parents wrote in specific comments regarding their frustrations:

- "I have been in contact with numerous organizations and I have received the same response from all of them. They say, 'sorry, can't do anything.'"
- "I have had no help in the recovery of my daughter . . . all in all, [they] treat you like you committed a crime. They find it their place to give you lessons on how they can't help. At least this is one thing they say that is not a lie."

#### U.S. Department of State Response

All but four parents responding to the survey contacted the U.S. Department of State regarding the abduction of their child or children, and most sought assistance from the State Department within a month of the abduction (76.3% or 74). Nineteen of these parents sought assistance from the State Department within 24 hours of the abduction.

Those who contacted the State Department regarding the international abduction of their child or children were asked in the survey to indicate (1) what their initial expectations were regarding how the State Department would assist them in locating and recovering their child; and (2) based on their experience, what they would now tell another left-behind parent to expect in State Department assistance. Results are outlined below:

<b>Table 34. Left-Behind Parents' Expectations of the U.S. Department of State</b>		
<b>That the Department of State would:</b>	<b>Initial Expectation of Respondent</b>	<b>Would Tell Another Parent to Expect</b>
Assign someone to investigate and search for your child	75.3% (70)	24.0% (18)
Refer to attorneys and investigators in foreign country	67.7% (63)	49.3% (37)
Refer you to free or low-cost legal assistance	51.6% (48)	13.3% (10)
Have staff which speak language of country to which your child was abducted	49.5% (46)	17.3% (13)
Be familiar with international abduction issues	87.1% (81)	48.0% (36)
Provide publications about international abduction	72.0% (67)	60.0% (45)
Offer advice about strategies to use in locating and recovering your child or children	80.6% (75)	25.3% (19)
Have knowledge about the Hague Convention and how it applies in foreign countries	69.9% (65)	58.7% (44)
Have knowledge about the legal system in the country to which your child was abducted	74.2% (69)	29.3% (22)
Cut off U.S. aid to countries which refuse to return abducted children	46.2% (43)	5.3% (4)
Provide report on welfare of child	62.4% (58)	30.7% (23)
Take direct action to pick up child	65.6% (61)	8.0% (6)

Parents added the following responses regarding their expectations under the "other" category:

- "They would work with foreign governments to enforce U.S. court order and help in getting child back."
- "That the U.S. would use more of its political power to encourage countries to assist in recovering children."
- "Would send all findings and reports of visits with child if they are not ordering their return."
- "Help to fund the return of child to U.S.A."
- "Prompt action for the return of the child. Little to no help. They send a Hague convention pamphlet and tell you not to kidnap back. Now, I say go get your child."

- "Would have enough concern to get important documents to me (i.e., a passport for MY daughter, copy of birth certificate, etc.). I never got passport to help me take her back and it took 11 MONTHS to get a birth certificate--is this insane or what!!"
- "Negotiate with the other country to help locate and return the children and punish the abductor."
- "I thought the State Department/U.S. Embassy would be my advocate in Jordan--no way. It is more interested in keeping the peace--don't rock the boat. 'It's just a domestic situation' I was told in the beginning."
- "Enforce my American rights for myself and my son."
- "Issue passports for child with ease."
- "Try and get Sweden to extradite for felony warrants from USA and return child."
- "Would provide physical address of child once located."
- "A firm stand on returning children to USA."
- "Expected would serve as a mediator."
- "Would actually do something besides hooking-up their answering machine"
- "Ask FBI to ask Interpol to search for my child."
- "Have people that are competent that answer the phone and head the units specifically, including (caseworker) who is worthless."
- "I expected they would be too important to help common citizen. Very compassionate and understanding. I wish they could do more! There's not a lot they can do with non-Hague countries."
- "I was contacted by the State Department. Did not know about them."
- "No help unless you are rich!"
- "Don't expect much. It would be easier to deal with the U.S. embassy in the country where your child is--but because of the State Department/Hague mandates everything must go through central authority in Washington. Delay, delay, delay. For example I wanted a welfare report on my children but it was not done--Washington (caseworker) did not okay it."

- "I think there is a lot more the State Department can do besides post paperwork from one country to another."

One parent stated that she "hoped the U.S. embassy presence would shake some sense into my former husband--but bottom line: Abductor's don't respect law (U.S.A)."

### Perceived Biases

About three-quarters of the responding reported that they perceived facing a number of biases from the institutions and individuals from whom they sought assistance. Parents were presented with a list of perceived biases and asked whether they felt that any of the cultural beliefs or biases listed negatively affected the treatment they received in attempting to locate and recover their children. In many cases, parents indicated encountering the bias, but did not identify the source of the bias. It should be emphasized that these responses are based on the parents' *perceptions*, and there is no way to verify if these perceptions are correct.

The perceived cultural beliefs or biases listed included:

- That family abduction is simply a domestic issue (62.7% of cases)

Law enforcement, both in the United States and in the foreign country were perceived as having this response most frequently. This included local, county, and federal (FBI) law enforcement. One stated that the "Police detective said that if a child is taken by a parent that the parent will take good care of the child." Another reported being told that "at least our child was with his parent and is okay." One parent reported that "my state representative said that it was domestic." Another parent reported this response from the 'Unsolved Mysteries' television show. Two parents reported this response from the U.S. Department of State.

- Bias against searching fathers (37.3% of cases)

Over half of those parents who believed that they had encountered this bias felt that both U.S. and foreign courts (specifically judges) favored the mother in these cases. Other sources of this perceived bias included law enforcement, the press, and victims' organizations.

- Race or ethnicity bias (36.0% of cases)

Responses regarding what individuals or organizations were perceived as having this bias were split between U.S. and foreign individuals and organizations. U.S. organizations which parents believed had expressed the bias included local police, FBI, judges, the press, and "local townspeople." One parent stated that the "FBI agent, judges, etc. were prejudiced against Asian Americans." Foreign organizations which parents believed had expressed a bias included foreign consulates located in the U.S., and government officials from other countries. A few parents



made more general statements about the biases they believed they had faced: "Islamic culture/laws," and "Chinese belief that children don't belong to their mothers ultimately."

- Presumed unfitness of left-behind parent (24%)

All but two parents who believed that they encountered this belief indicated that it was expressed by law enforcement (local U.S., F.B.I., or foreign). One parent each reported facing this belief from legal aid, co-workers and the abductor's friends. Another parent reported that the "Mexican consulate expressed that I must have done something wrong to my ex-husband." A parent whose child was abducted to Latin America reported that "the worst for me was the assumption among divorce court professionals, especially mental health workers, that by definition the searching parent is just one of those warring parents who will destroy their kids in the process. I rarely felt believed, trusted, understood, empathized with. I found this tendency even worse in [the U.S]."

- Religious bias (18.7%)

Only one parent reported that they believe law enforcement expressed a religious bias. In nearly all other reported cases, the perceived bias was expressed by foreign government officials or representatives of religious organizations (e.g., the "Islamic Center in my community"). In one cases, the parent reported that the "Judge used [religion] to make the abductor [appear] the better man."

- Bias against non-custodial parents (16%)

According to all but one parent who marked this item, the courts were biased against non-custodial parents. Second to courts were State laws and law enforcement. One parent indicated that she felt she had encountered this bias from "all organizations."

- Victim of family violence bias (14.7%)

Parents who reported encountering this bias indicated believing that individuals were biased in favor of the abductor who claimed to be a victim of domestic violence, or that the child was a victim of child abuse. One parent reported feeling that the abductor's physician was biased, while two parents believed they had faced this bias from family violence programs: "Domestic violence [shelter] knew my wife was going to abduct our daughter and they told no one about it." In another case, the parent was told by a shelter worker that "Women should have a right to flee the country to protect their child if the system won't."

- How searching parents should act in public (e.g., tearful) (12%)

Law enforcement was believed to have a bias regarding how searching parents should act in about half of the cases where this perceived bias was indicated. Other parents believed attorneys and the Department of State had this bias. One parent reported that "no one likes to deal with a person suffering from an abducted child who is emotional. You have to be non-human."

- Bias against American "lifestyle" (e.g., TV, violence) (10.7%)

The abductor's family and friends, as well as courts, judges, and government officials in foreign countries were reported as having this bias. In one case, the parent reported that "Colombians resent the U.S. for lots of reasons." Another parent reported that the bias resulted from the "Chinese belief that U.S. is not a healthy place for children." More fundamental was a bias in favor of the country's own nationals. One parent reported that "I felt the German Court just overlooked the wrongdoing of my ex-husband because he was German and I was not." Another stated "I was told by the French police that they were sorry but that the family had connections and they had to be careful. His family are French aristocrats with connections to the . . . French government."

About 10% of parents reported a perceived bias against working women, and four percent of parents also reported biases against educated women, and against U.S. military and personnel in foreign countries.

### Discussion

Many of the obstacles and perceived biases identified in the current study mirror those of Girdner and Hoff's (1994) study, "Obstacles to the Recovery and Retention of Parentally Abducted Children." Obstacles identified by Girdner and Hoff included:

- Inadequacies and inconsistencies in criminal parental abduction statutes;
- Lack of uniformity and specificity in State variations of the Uniform Child Custody Jurisdiction Act (UCCJA);
- Ambiguity and inconsistency regarding the Parental Kidnapping Prevention Act (PKPA);
- Lack of effective enforcement procedures;
- Lack of compliance with federal laws (e.g. entering child and abductor into NCIC);
- Lack of involvement and experience by law enforcement;
- Lack of criminal investigation and prosecution;
- Courts' lack of knowledge and experience relating to parental abduction and child custody jurisdiction;
- Finding attorneys with expertise in parental abduction;
- Parents cannot afford expenses required to locate, recover and return their children;
- Prevailing belief that parental abduction is not a serious matter.

In the current study, all of the items outlined in Table 33 are identified by a great number of respondents as obstacles that they have faced in the search and/or recovery of their children. Even "difficulties with missing children's organizations," was identified by 54.5% of respondents as an obstacle, although only 21.4% considered it an obstacle with a high level of difficulty. Some who reported difficulty in working with missing children's organizations listed a frustration with privacy regulations, and a lack of follow-up on the part of the agency. One parent wrote that "I feel guilty when I talk to them--like I need to do more."

There were six primary obstacles which the majority of respondents consistently identified as presenting the highest level of difficulty in the search and/or recovery of their children:

- a lack of sufficient funds;
- the laws of other countries;
- ease of exiting the U.S.;
- the lax attitude of law enforcement agencies;
- the judge's lack of experience in international abduction cases;
- difficulty working with government agencies/officials in foreign country.

A lack of sufficient funds was the obstacle that responding parents most frequently identified. This may not be surprising, considering the large sums of money that parents had reported spending in the earlier section. This perceived lack of funding, however, is related to the other obstacles that respondents reported. Many parents who were frustrated by the investigation being conducted by law enforcement hired private investigators to search for their children. Others hired rescuer/mercenaries to try and recover their children. Hiring either of these professionals was in most cases very expensive. In addition, respondents who felt powerless when faced with foreign government officials and/or laws which did not act in their favor may have felt that they would have been taken more seriously if they could have traveled to the country, which in some cases was very costly. Even the telephone costs added up very quickly. Parents who were dissatisfied with their attorneys (in the U.S. and/or in a foreign country) may have believed that having more funds would have enabled them to hire better legal representation.

A number of the obstacles identified may be interrelated. Government officials and agencies in other countries may simply be following that country's laws; in this case the obstacle may be the foreign government's laws. Some respondents reported that the difficulties they faced in dealing with foreign government agencies and officials included language barriers; others reported that it was a lack of concern on the part of agency personnel and officials. One parent reported that working with the foreign government was impossible, because the "abductor married [a] prominent citizen" in the country.

Local law enforcement-related obstacles generally took the form of inaction. A lack of interest in parental abduction cases, as well as general ignorance about the steps which should be taken were reported by several respondents. One frustrated parent wrote, "Nobody knew what to do!" The FBI also presented an obstacle to many parents, and in most cases this was because the agency refused to take on their case. Five parents reported frustration because the FBI had "no power in [the] foreign country."

Parents who reported the judge's inexperience in dealing with international parental abduction was an obstacle may have referred to a number of different things, including a foreign judge's refusal to honor existing U.S. court orders regarding custody (which the judge would not be required to do), or an unwillingness on the part of a U.S. judge to issue protective measures which the respondent felt could have prevented the abduction (e.g., supervised visitation).

More than three-quarters of respondents identified "American laws" as an obstacle, and about half of respondents considered it an obstacle which presented a high level of difficulty. This obstacle could be related to the "ease of exiting the U.S." There were eleven parents who specifically listed the fact that parents crossing international borders with a child do not need to verify custody and/or permission from the other parent to do so as a major obstacle.

Parents' responses regarding their expectations regarding the actions of the U.S. Department of State clearly demonstrate a high level of frustration. Additionally, some comments indicate that even after having been through the process, many parents do not fully understand the procedures of state, federal and international law. Information regarding where responsibilities lie and how to communicate with agencies, involved in parental abduction cases appears to be very difficult to access.

A number of parents also believed that they had encountered biases when dealing with some of the above individuals and institutions (law enforcement, judges, and government/agencies officials in foreign countries). In all likelihood, this increased the perceived difficulty level of the obstacle.

## 10. COURT REMEDIES - HAGUE AND NON-HAGUE

The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention), ratified by the United States in 1988, is an international treaty. It is currently in effect in 49<sup>7</sup> countries and its purpose is to expedite the return of children to the country with jurisdiction to determine custody. Each country which is party to the Hague Convention is required to appoint a Central Authority responsible for receiving and transmitting petitions for the return of a child, and trying to locate children alleged to have been abducted or wrongfully retained in its country. (See Chapter 3 for the survey of central authorities.)

About one-third of parents who responded to the survey filed an application under the Hague Convention:

<b>Table 35. Did left-behind parent file application under Hague Convention?</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Yes</b>	35	36.8%
<b>No, because country child was abducted to was not a party to Hague at the time</b>	54	56.8%
<b>No, did not know of Hague Convention</b>	3	3.1%
<b>No, chose to pursue other remedies</b>	3	3.1%

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<sup>7</sup>As of November 30, 1999, the Convention applies in 57 countries. (The Convention takes effect in three additional countries on January 1, 2000). For a list of U.S. treaty partners, see footnote 3 in Chapter 1.

For those that did file applications, the point at which they learned about the Hague Convention varied:

<b>Table 36. How long after abduction occurred did you learn about the Hague Convention?<sup>s</sup></b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Already knew about it</b>	3	9.1%
<b>Within first week of abduction</b>	8	24.2%
<b>8 to 30 days after abduction</b>	4	12.1%
<b>1 to 3 months after abduction</b>	5	15.2%
<b>4 to 6 months after abduction</b>	6	18.2%
<b>7 to 9 months after abduction</b>	3	9.1%
<b>10 to 12 months after abduction</b>	4	12.1%

<sup>s</sup> Two missing cases.

<b>Table 37. How did left-behind parent first find out about the Hague Convention?</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Attorney</b>	7	20.0%
<b>Missing children's organization</b>	12	34.3%
<b>Police (law enforcement)</b>	2	5.7%
<b>U.S. State Department</b>	8	22.9%
<b>Other</b>	6	17.1%

“Other” included district attorney and private investigator.

## Hague Application Submission

All but four left-behind parents submitted their Hague applications directly through the U.S. Central Authority (the U.S. Department of State) only. Two parents submitted their applications directly to the foreign central authority only, and two parents submitted it through both central authorities. More than half of the left-behind parents reported that they submitted their application within 6 months of the abduction:

<b>Table 38. How long after abduction occurred did you submit your Hague application?<sup>1</sup></b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Within 1 month of abduction</b>	7	21.9%
<b>1 to 3 months after abduction</b>	10	31.3%
<b>4 to 6 months after abduction</b>	5	15.6%
<b>7 to 9 months after abduction</b>	4	12.5%
<b>10 to 12 months after abduction</b>	2	6.3%
<b>Over 1 year after abduction</b>	4	12.5%

<sup>1</sup> Three missing cases.

Of those who submitted a Hague application, 62.1% (8) reported experiencing barriers to being able to promptly complete the application. These barriers included:

<b>Table 39. Barriers to completing Hague application</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Instructions/forms difficult to understand</b>	7	38.3%
<b>Had to get legal documents translated</b>	11	61.1%
<b>Had to get certified court order<sup>8</sup></b>	8	44.4%
<b>Had to make repeated calls to State Department</b>	15	83.3%
<b>Other barriers</b>	9	50.0%

Other barriers, according to one parent, included "stress, fear, [being] uneducated." Another parent stated he "didn't understand that you needed the child's exact location to enact the Hague."

A total of 12 different countries received Hague applications from left-behind parents responding to the survey. The countries with the highest number of applications reported were Mexico and France:

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<sup>8</sup>Violation of a custody order is not a prerequisite to invoking the Hague Convention. While providing a copy of a custody order may help support an applicant's claim that his/her custody rights were violated, the absence of a custody order, whether certified or not, ought not be a barrier to invoking the Convention.



<b>Table 40. Countries which received Hague applications<sup>u</sup></b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Mexico</b>	7	20.0%
<b>France</b>	5	14.3%
<b>Germany</b>	4	11.4%
<b>Canada</b>	3 <sup>v</sup>	8.6%
<b>Australia</b>	3	8.6%
<b>Sweden</b>	2	5.7%
<b>New Zealand</b>	2	5.7%
<b>The Netherlands</b>	2	5.7%
<b>Israel</b>	2	5.7%
<b>Greece</b>	2	5.7%
<b>United Kingdom</b>	2	5.7%
<b>Honduras</b>	1	2.9%

<sup>u</sup> The parent originally submitted an application to Canada, but 1.5 years later the child was located in Mexico and the application was forwarded to that country.

Twenty (57.1%) of those parents who submitted a Hague application had the application accepted by the foreign central authority. An additional 28.5% (10) reported that their application was not accepted by the foreign central authority. The remaining 14.2% (5) either were still waiting for a response from the foreign central authority or had recovered their child prior to receiving a response. Some parents were confused by the entire process:

- "I was never informed of what was going on and was told not to come to the country."
- "I never heard from them."

The eight parents who reported that their application was not accepted indicated that the central authority gave them the following reasons for the rejection:

<b>Table 41. Why was Hague application not accepted?<sup>w</sup></b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Child abducted prior to country adopting Hague Convention</b>	2	18.2%
<b>Country or region of country not part of Hague Convention</b>	1	9.1%
<b>Other reason</b>	5	45.5%
<b>No reason given</b>	3	27.3%

<sup>w</sup> Ten valid cases; respondents could answer more than one.

Parents whose application was not accepted for "other" reasons described these reasons:

- "[B]ecause abductor bribed them to say they were unable to locate my sons!"
- "State Department did not fax complete document to Greek authorities."
- "No central authority established." [Honduras]

About half of the parents who reported that their application was accepted indicated that a court hearing before a judge was the procedure used in the other country to determine the country of habitual residence. Six others (31.6%) reported the procedure to be a judicial review of the application without a hearing. The remainder (15.8%) did not know.

Only 33.3% of parents were offered or referred by the foreign central authority to low-cost or free legal assistance and representation for the Hague proceeding. Most (55.6% or 10) were told that it was not available; 2.1% (2) were told they were not eligible under the income criteria.

Fewer than half (40%) of those in which the procedure was a court hearing actually attended the Hague hearing in the foreign country. Reasons that the rest did not attend included:

<b>Table 42. Why didn't you attend the Hague hearing?<sup>x</sup></b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Could not afford airfare/cost of staying in country</b>	3	50.0%
<b>Could not get time off work</b>	1	16.6%
<b>Not enough notice to make arrangements</b>	3	50.0%
<b>Attorney advised me not to attend; no need</b>	2	33.3%
<b>Other reason</b>	3	50.0%

<sup>x</sup> Respondents could answer more than one item so totals may equal more than 100%.

Eighty percent (4) of those who remained reported that their attorney attended the hearing in their place. Another parent reported that "I had written evidence presented to the Judge [in Mexico] through the State Department."

### Hague Proceeding

Overall, 60% of parents (12) reported that they had legal representation for the Hague proceeding. Fifteen percent (3) reported not having legal representation, and 20% (4) were still awaiting the start of the proceeding. For those cases in which the proceeding was a judicial hearing, parents also reported that the following individuals attended:

<b>Table 43. Who attended the Hague hearing?</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Attorney of left-behind parent</b>	10	83.3%
<b>Abductor</b>	7	58.3%
<b>Abductor's attorney</b>	7	58.3%
<b>Child or children</b>	1	8.3%
<b>Members of abductor's family</b>	2	16.7%
<b>Staff of foreign central authority</b>	2	16.7%
<b>Other individual</b>	2	16.7%

“Other” includes therapist, private investigator, and spouse of the abductor.

Those that submitted testimony for the hearing included:

- Left-behind parents (62.5% or 5);
- Abductors (50% or 4);
- Friends/family of the abductor (37.5% or 3);
- Law enforcement (12.5% or 1); and
- Others (37.5% or 3).

### Content of the Hague Hearing

At the Hague hearing, the court must determine whether the child has been wrongfully removed or retained within the meaning of the Convention. This is not meant to be a hearing on the best interests of the child. Nor is a decision to return (or not return) a child under the Convention to be taken as a decision on the merits of custody. Parents who attended the Hague hearing reported that, during the hearing, the judge allowed testimony on the following topics:

<b>Table 44. Non-jurisdictional testimony allowed by Judge during Hague hearing</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Allegations of child abuse and neglect</b>	2	22.2%
<b>Allegations of domestic violence</b>	4	44.4%
<b>Parenting practices of either or both parents (other than abuse allegations)</b>	2	22.2%
<b>Arguments of raising child in U.S. vs. other country</b>	5	55.6%
<b>U.S. culture vs. culture of other country</b>	2	22.2%
<b>Religious upbringing of child</b>	1	11.1%
<b>Other testimony related to interests of child</b>	5	55.6%
<b>Other non-jurisdictional testimony</b>	4	44.4%

Most parents who indicated there was non-jurisdictional testimony submitted reported that the testimony was biased against them:

- "Any and all statements made by abductor was [sic] accepted as presented--without any verification or challenge."
- "Abductor made accusations of domestic violence with her mother lying for her."
- "[H]earing was in French without a translator. Pediatrician's statement that my son was having nightmares due to my attempts to return him home."

One parent who attended the Hague hearing stated that it ". . . was not in English. According to my second attorney it was a mocking of me. And my attorney was very bad to let it happen."

In one case, the left-behind parent (with the assistance of a missing children's organization) herself submitted non-jurisdictional evidence for the Hague hearing which included:

- "[W]ritten evidence on the reason my daughter should not be raised in Mexico by the abductor: Domestic abuse. . . My daughter or the abductor had no ties to Mexico . . . also the abductor's unstable behavior and the fact that he took a 2 and ½ year old away from everyone that loved her. There was so much evidence against the abductor. I was afraid Mexico might say the abductor and child have lived in Mexico over a year and that's where they should stay if they wished to."

Some of the testimony unrelated to jurisdiction may have been offered as part of a 13(b) defense in the Hague case, e.g. abuse allegations. Other topics, such as the merits of raising children in the U.S. versus another country, have no valid basis for being raised in a Hague return case.

#### Hague Outcome

Of those 16 cases in which a Hague proceeding had taken place, just over one-third (37.5% or 6 cases) had resulted in the court ordering that the child return to the U.S. Other outcomes were as follows:

<b>Table 45. Hague proceeding outcomes</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Court ordered child returned to U.S.</b>	6	37.5%
<b>Court denied petition for return</b>	4	25.0%
<b>Court awarded custody to abductor</b>	2	12.5%
<b>Other outcome</b>	4	25.0%

Other outcomes included 3 cases in which the court awarded temporary custody to the abductor pending a later court proceeding. In another case, the left-behind parent reported that the Greek judge overseeing the Hague hearing "stated that if I didn't settle [with the abductor] I would lose my daughter completely." The settlement stipulated that the child would remain in Greece for at least three more years.

## Non-Hague Court Proceedings

Parents for whom the Hague convention is not an option may attempt to pursue the return of their child in the courts of the country to which the child was abducted. For the majority of parents who responded to the survey (66.7% or 62 cases), the Hague Convention was not an option because the destination country was not a party to the Hague at the time of the abduction. Twenty-one (33.8%) of these parents sought a court order in a foreign court. This is 21.6% of the entire sample of respondents.

Countries<sup>9</sup> in which parents sought foreign court orders in Non-Hague proceedings included:

- El Salvador (2);
- Israel (2);
- Pakistan (2);
- the Philippines (2);
- and South Africa (2).

One parent each sought a court order in: Colombia, Czech Republic, Dominican Republic, India, Italy, Mexico, Morocco, New Zealand, Syria, Turkey and Uruguay. Parents' goals and outcomes in seeking a non-Hague court order are outlined in the table below:

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<sup>9</sup>Israel, South Africa, the Czech Republic, and Mexico are parties to the Hague Convention, but abductions occurring prior to the date of or accession are not covered by the treaty.

<b>Table 46. Parents who sought court order in foreign countries</b>		
	<b>Number of parents who sought order</b>	<b>Percentage who were granted their request</b>
<b>Requested that the court order the child's pick-up</b>	15	86.6%
<b>Requested that the court grant custody to left-behind parent</b>	13	61.5%
<b>Requested that the court enforce their U.S. custody order</b>	11	81.8%
<b>Requested that the court order the child's return</b>	10	80.0%
<b>Requested that the court grant visitation</b>	7	28.5%

### Discussion

Indications are that the Hague application process continues to be confusing for many left-behind parents, and that a lack of communication between the parent, the foreign central authority, and the U.S. Department of State is often the reason given for this confusion.

About half of the respondents who submitted Hague applications reported that the foreign central authority accepted the application. An extremely small number of parents were referred to low-cost or free legal assistance and representation, and fewer than two-thirds of parents report having legal representation for the Hague proceeding. These numbers corroborate parents' earlier concerns regarding having adequate funds for the search and recovery of their children.

In a little over half of the Hague cases, the proceeding used to determine habitual residence was a court hearing before a judge. In fewer than half of these cases parents actually attending the court hearing. While most who did not attend were represented by an attorney or official at the hearing, a lack of funds and/or inadequate notice resulted in their missing the hearing.



Parents' reports on their Hague experiences point out the inconsistent implementation of the Hague Convention in different countries. This finding is supported by the survey of central authorities described in Chapter 3. Some parents had very positive experiences in which legal assistance was provided, ongoing contact was maintained by the central authority, and proceedings were scheduled and conducted quickly. Others describe a slow, confusing process during which parents must endure allegations of abuse, and are forced to defend their lifestyle and culture to a foreign court. Half of the respondents who attended a Hague hearing reported that the judge allowed non-jurisdictional testimony at the hearing, some of which may have related to Hague defenses, but some which clearly did not.

On the face of it, parents who pursued a return of their child through non-Hague courts appeared to be more successful than those who sought a return of their child through a Hague proceeding. Eighty percent of non-Hague cases in which a return was requested were granted by the court, compared to about one-third of Hague cases. Courts in non-Hague countries also granted custody to the left-behind parent in 61.5% of cases in which it was requested, and ordered the child's pick-up in 86.6% of cases in which it was requested.

The samples are small at this point and it is unclear how representative they are of other Hague and non-Hague cases. Of the entire sample of 97 respondents, only 35 replied that they submitted a Hague application for return and only 21 responded that they petitioned the foreign court in a non-Hague country.

Reasons for the difference in court outcomes may have several explanations. Courts in non-Hague countries may base their decisions on other factors, such as the best interest of the child. Another explanation may be that those cases which were pursued through non-Hague courts were less problematic than the Hague cases, and that judges were better able to make a decision, particularly if child endangerment was a consideration. External factors may have also contributed to the court decision in a non-Hague country. If the abductor had entered the country without documentation, or was engaged in illegal activity, the court may have been less likely to rule in his or her favor.

It is very important to note that, despite these results, *actual child return* rates for cases which were pursued in courts in non-Hague countries, when compared to those pursued in Hague proceedings were almost exactly the same (36.8% compared to 37.5%). In other words, just because the court in the non-Hague country ordered the return of the child, this does not mean that it actually occurred.

## 12. RESOURCES USED TO SEARCH FOR AND RECOVER CHILD

In looking for their children, parents answered that they had contacted the following individuals and organizations shortly following the abduction incident:

<b>Table 47. Sources from which parents sought assistance while trying to locate and/or recover abducted child</b>		
	<b>First 24 hours (Percent of cases)</b>	<b>First month (Percent of cases)</b>
Own family	75.5%	5.7%
Own friends	60.6%	17.0%
Family of abductor	46.8%	28.4%
Friends of abductor	41.5%	28.4%
Police/sheriff or other law enforcement	79.8%	15.9%
Attorney in U.S.	51.1%	37.5%
Courts in U.S.	31.9%	56.8%
U.S. Department of State	20.2%	62.5%
Prosecutor	16.0%	64.8%
Federal Bureau of Investigation (FBI)	16.0%	62.5%
U.S. embassy/consulate in other country	10.6%	58.0%
NCMEC	20.2%	67.0%
State missing children clearinghouses	9.6%	51.1%
Missing child non-profit orgs.	13.8%	62.5%
Schools	17.0%	31.8%
Bureau of vital statistics	4.3%	26.1%
Foreign embassy/consulate in U.S.	12.8%	48.9%
Private investigator	7.4%	37.5%
Rescuer/mercenary	2.1%	25.0%
Courts in other country	2.1%	21.6%
Psychics	1.1%	19.3%
Attorney in other country	4.3%	29.5%

### Initial Contact with Law Enforcement

Law enforcement is often the first avenue of assistance that left-behind parents turn to when their child has been taken. Hatcher and Brooks (1994) discovered that parents whose children had been abducted by the other parent called law enforcement first in 90.2% of cases, and usually within twenty-four hours of their initial concern (61.6%). Families also reported calling NCMEC (41.2%) and relatives of the abductor (29.4%) for initial assistance.

Using the data collected in the NISMART study, Plass, Finkelhor, and Hotelling (1995) found that parents reported that they contacted the police in about 40% of the cases (about 141,000). This indicates a higher reporting rate than in other family crimes such as domestic violence (Plass, et al., 1995). Results also indicated that parents were more likely to contact police if the child was actually taken, the abductor threatened to prevent any contact with the child, or an attempt was made to conceal the location of the child. These studies primarily looked at domestic abductions.

In the current study, most parents contacted law enforcement immediately (within two hours):

<b>Table 48. How long after your initial concern did you contact law enforcement?</b>		
	<b>Frequency of response</b>	<b>Percent of Cases</b>
<b>Immediately (under 2 hours)</b>	56	60.9%
<b>2 to 12 hours after abduction</b>	11	12%
<b>13 to 24 hours after abduction</b>	10	10.9%
<b>2 to 3 days after abduction</b>	10	10.9%
<b>4 to 7 days after abduction</b>	3	3.3%
<b>8 days to 2 weeks after abduction</b>	-	-
<b>3 to 4 weeks after abduction</b>	-	-
<b>More than 1 month after abduction</b>	2	2.2%

Making a report to law enforcement does not ensure they will respond. Collins, Powers, McCalla, Ringwalt and Lucas (1993) surveyed both left-behind parents and law enforcement personnel and learned that, rather than handling these cases themselves, the police refer many cases to family court, prosecutors, and social service agencies. This response is consistent with

law enforcement agencies' traditional reluctance to get involved in cases perceived as being domestic or civil in nature. Forst and Blomquist (1991) found that police pay more attention to stranger abductions, tending not to take parental abduction cases as seriously unless substantial information about sexual or physical abuse is evident. In addition, the ratio of police reports of runaways to those of family abductions is fifty-three to one, and only 27% of 1,060 law enforcement agencies surveyed across the country had written policies or procedures for handling parental abductions (Collins, et al., 1993). Sedlack, et al. (1996) found that the three factors which most often influence whether law enforcement will take a report are:

- existence of a custody order (60%);
- endangerment of child (52.1%); and
- joint custody (50.3%)

In the current study, many parents were less than satisfied at the initial law enforcement response in the current study as well. About two-thirds of the respondents reported that the law enforcement official they first spoke with regarding their case told them at least one of the following:

- the child had to be missing for a prescribed period of time before law enforcement would take action (38.4% of cases);
- they would not take case information because they saw the abduction as a domestic situation (33.7% of cases);
- that the left-behind parent needed to have a custody order before law enforcement action could be taken (48.8% of cases);
- that they could not take action because the abduction was not a violation of state criminal law (33.7% of cases);
- that they could not do anything unless there was evidence the child was taken out of state (31.4%).

Eleven parents added their own comments about the police response, including:

- "Told me to go home, wait at least a week. He'll probably bring the child back by then."
- "As a male parent my complaint was not taken seriously."
- "Since my ex-husband lived in one county, and I in another, and [the] abduction took place in a third county, there was a problem with jurisdiction."
- "They took the report, but did not investigate it immediately."

- "Couldn't take action because case was pending in domestic court and couldn't be declared missing until [abductor] didn't show up for court."
- "'Your child's not missing, lady, you know where he is; he is with his father.'"
- "That they could not do anything . . . because the kids left to Mexico."
- "[Police] felt the abductor was still in U.S. I felt otherwise and was unfortunately correct."

Six parents reported a very positive initial response from the law enforcement agency, including comments such as:

- "Police Department told me everything that I needed to do and verified that [the abductor and child] had left the State of Maryland . . . within a matter of hours."
- "Law enforcement officer tried to do everything possible that system allowed to find my daughter."
- "They told me immediately to get a temporary custody order and also sent faxes to Copenhagen and Manchester, England airports to check for the abductor's and my child's arrival."
- "Considered child missing from the very beginning."

One parent reported a mixed response:

- "I first contacted [county] sheriff's department. They gave me a phone number to call on Monday, because they couldn't do anything on the weekend. I then called [a different county's] sheriff's department and they filled out two missing person reports and put them on the [NCIC]."

### Initial Contact with Attorneys

Many parents also contacted an attorney shortly following their concern that an abduction had taken place. About one-third (34 or 39.5%) contacted the attorney immediately (within 2 hours). The following chart shows the length of time between concern and contact:

<b>Table 49: How long after your initial concern did you contact an attorney?</b>		
	<b>Frequency of response</b>	<b>Percentage</b>
<b>Immediately (under 2 hours)</b>	34	39.5%
<b>2 to 12 hours after abduction</b>	14	16.3%
<b>13 to 24 hours after abduction</b>	15	17.4%
<b>2 to 3 days after abduction</b>	7	8.1%
<b>4 to 7 days after abduction</b>	6	7.0%
<b>8 days to 2 weeks after abduction</b>	2	2.3%
<b>3 to 4 weeks after abduction</b>	1	1.2%
<b>More than 1 month after abduction</b>	7	8.1%

When parents were later asked to report whether they had used attorneys in the U.S.; attorneys in a foreign country; private investigators, and/or rescuers/mercenaries in trying to search for and recover their child, by far the largest group reported using an attorney in the U.S.:

<b>Table 50: Professionals used by parents to search for and recover their abducted children</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Attorney in the United States</b>	84	87.0%
<b>Attorney from other country</b>	53	54.6%
<b>Private investigator</b>	54	55.6%
<b>Rescuer/Mercenary</b>	21	21.6%

The way in which parents learned of professionals to contact with family and friends playing a major role as referral sources:

<b>Table 51. How did parents locate the professionals used?</b>				
	<b>Attorney in U.S.</b>	<b>Atty in other country</b>	<b>Private Investigator</b>	<b>Rescuer/ Mercenary</b>
<b>Already had</b>	38.7%	1.8%	-	-
<b>Family</b>	4.0%	16.4%	13.2%	15.0%
<b>Friends</b>	12.0%	7.3%	20.8%	15.0%
<b>Attorney in U.S.</b>	9.3%	9.1%	15.1%	5.0%
<b>Attorney in other country</b>	1.3%	-	3.8%	-
<b>Prosecutor</b>	5.3%	10.9%	1.9%	-
<b>U.S. Dept of State</b>	-	14.5%	-	-
<b>U.S. Embassy/Consulate</b>	-	14.5%	-	5.0% <sup>y</sup>
<b>Missing children's organization</b>	1.3%	-	7.5%	-
<b>Phone book</b>	2.7%	1.8%	11.3%	-
<b>Private investigator</b>	-	-	-	10.0%
<b>Other left-behind parents</b>	1.3%	5.5%	5.7%	20.0%

<sup>y</sup> This represents one case. The referral came from the U.S. consulate. The child has not been returned.

According to parents responding to the survey, the level of knowledge about international parental abduction varied widely among these professionals. In general, left-behind parents considered rescuers/mercenaries to be the most knowledgeable professionals, while the least knowledgeable were attorneys in the U.S. The following table outlines level of knowledge for all four groups of professionals:

<b>Table 52: How knowledgeable were the professionals you used?</b>					
	<b>Little or no knowledge</b>	<b>Some knowledge</b>	<b>Moderate knowledge</b>	<b>Great knowledge</b>	<b>Very great knowledge</b>
<b>Attorney in the United States</b>	55.6%	18.5%	12.3%	4.9%	8.6%
<b>Attorney from other country</b>	28.6%	21.4%	21.4%	19.6%	8.9%
<b>Private investigator</b>	32.7%	29.1%	20%	14.5%	3.6%
<b>Rescuer/Mercenary</b>	7.7%	15.4%	19.2%	15.4%	42.3%

As rescuer/mercenaries were hired specifically for their knowledge about parental abduction and re-abduction strategies, these results may be skewed. Attorneys and private investigators cover a more general field, so the expectation is that, as a group, they would be less specialized in the area of parental abduction than rescuer/mercenaries, some of whom operate outside of the law.

### Discussion

The Missing Child Act of 1982 and the National Child Search Assistance Act of 1990 require that law enforcement agencies take a missing child report and enter information on that child into the National Crime Information Center's (NCIC) computer without a waiting period, regardless of whether the abduction constitutes a criminal violation. Left-behind parents surveyed by Hatcher and Brooks (1994) reported that 55.8% of law enforcement agencies entered the child's name in NCIC during the first week after their children's abductions. However, almost half (14) of the missing child state clearinghouses surveyed by Girdner (1994c) reported that, in practice, law enforcement personnel inaccurately believe that there must be a violation of the state parental abduction statute before they are required to enter a parentally-abducted child into the NCIC. Most identified an alternative agency as authorized to make an NCIC entry. In one-third of the states no entry was made if the designated law enforcement agency failed to make an entry (Girdner, 1994c).



The current study's findings reinforce the contention that law enforcement's response to these cases is often inadequate. The research available indicates that law enforcement personnel are more likely to respond to those cases of parental abduction considered to be more "serious", including cases where there is an existing sole or joint custody order (Sedlack, et al., 1996). It may also include cases in which the child is taken out of state, and/or the child is concealed (Finkelhor, et al., 1991 and Girdner, 1994c). A police response is more likely if a court order delineating custody had been issued in the state of the abduction, and the existence of a restraining order prohibiting the removal of the child from a state doubles the number of states in which police would undertake a search (Girdner, 1994c).

Other factors which may prompt a high priority police investigative response are cases in which the child is in danger (Sedlack, et al., 1996), there is a family history of abusing the child, or the child has special medical needs (Collins, et al., 1993).

## 12. WAYS IN WHICH INDIVIDUALS AND INSTITUTIONS WERE HELPFUL

### Assistance for the Search and Recovery of Children

Throughout the search for their children, parents reported turning to a number of different sources for assistance of all types. Those individuals and organizations which provided *significant* assistance to parents included:

**Table 53: Who or what organizations provided significant assistance in the search and/or recovery of your child?<sup>z</sup>**

	Number of cases	Percent of cases
Your family (e.g., parents, siblings, other children, current spouse)	67	73.6%
National Center for Missing and Exploited Children (NCMEC)	53	58.2%
Your friends and/or neighbors	40	44.0%
Missing children's non-profit organizations	38	41.8%
Courts in the United States	35	38.5%
Attorney in the U.S.	34	37.4%
U.S. Embassy/Consulate in other country	34	37.4%
U.S. Department of State	34	37.4%
Federal Bureau of Investigation (FBI)	31	34.1%
Private investigator	30	33.0%
Police/Sheriff	29	31.9%
Attorney in other country	25	27.5%
Prosecutor	25	27.5%
State missing children's clearinghouse	19	20.9%
Co-workers	17	18.7%
Foreign embassy/consulate in U.S.	17	18.7%
Non-family members of abductor's ethnic community	15	16.5%
Abductor's family	14	15.4%
Abductor's friends and/or neighbors	13	14.3%
Schools	11	12.1%
Social service professionals	11	12.1%
Clergy	10	11.0%
Central Authority in Hague country	10	11.0%
Courts in non-Hague country	9	9.9%
Bureau of vital statistics	6	6.6%
Government offices/officials in non-Hague country	5	5.5%
Courts in another country under the Hague	4	4.4%

<sup>z</sup> Six parents did not respond to this question. Totals equal more than 100%.

The survey sought to learn the diverse nature of assistance that parents had received. Emotional support, information or advice about international abduction, and information or advice about legal issues were the types of help reported most often:

<b>Table 54: Type of help or support received in search</b>		
	<b>Number of cases</b>	<b>Percent of cases</b>
<b>Emotional</b>	80	86.0%
<b>Information or advice about international abduction</b>	71	76.3%
<b>Information or advice about legal issues</b>	60	64.5%
<b>Help in locating the abductor of your child</b>	43	46.2%
<b>Financial help (gifts, loans)</b>	37	39.8%
<b>Flexible or lightened schedules at work</b>	29	31.2%
<b>Household/child care assistance</b>	7	7.5%

Most parents also included narrative descriptions of the ways in which different institutions and organizations had been helpful in the search for their child. These responses are described below.

#### Law Enforcement

##### **Police or Sheriff in the U.S.**

The nature of the help from local law enforcement (police and sheriff) ranged widely. All of the parents who responded to this question indicated that law enforcement issued arrest warrants, and/or conducted an investigation into the location of the child and abductor. Parents reported different levels of satisfaction with the law enforcement response, however. Some described a very positive response:

- “County sheriff requested telephone log subpoena and arrest warrant.”
- “Local cop did a lot of work contacting FBI, [state law enforcement], court appearances, and more until extradition.”
- “One detective was very helpful.”

- “Understanding and they did everything needed.”
- “Immediate response to our call through investigation.”
- “Knew child, so [they] acted fast.”
- “Very fast, sympathetic.”
- “Helped contact other organizations.”
- “Never gave up.”

One parent described the creative resources utilized by law enforcement in her case:

- “Initial patrol officer used Greek donut shop contacts to find out ex-husband’s whereabouts.”

Other parents were frustrated by the less than intense involvement of law enforcement:

- “Just took report. Sent it to DA’s office.”
- “After original problems, they got information re-entered into NCIC.”
- “Took report.”
- “Came to house and filled out papers.”
- “Difficult to get reports from them.”
- “Helpful but they could only do so much because of prosecutor.”

### **Federal Bureau of Investigation (FBI)**

Sixteen parents found the FBI to be quite helpful in their cases. For these cases, the FBI was generally involved in obtaining a U.F.A.P. warrant, and assisted with location of the abductor and child. Specific comments regarding the help received by parents included:

- “They located the country that [the abductor and child] were in.”
- “Agents have done much work.”
- “U.F.A.P. warrant--made arrest.”

- “They questioned [accomplice] and went to Germany.”
- “U.F.A.P. warrant issued and referred to Interpol.”
- “Agreed to go to Mexico.”
- “I believe [the FBI agent] tried. It was slow. Abductor and father’s rights group . . . made FBI think abductor was in U.S.”
- “Every way--personal, counseling, above and beyond.”

Five parents were very unhappy with the response from the FBI:

- “Refused to help.”
- “Not helpful”
- “No help. Trite answers.”

Other responses were mixed:

- “One supportive individual, the rest were jerks.”
- “Slow getting into the case, but they worked on it.”

Interpol

The help from Interpol was generally perceived as an extension of FBI assistance. In 7 cases, Interpol worked to locate the child and abductor:

- “Matched telephone number to address.”
- “Contacted son’s school.”
- “Located child in foreign country (verified address).”
- “Very good, accurate information.”

In one case, the parent indicated that Interpol “helped after [a congressman] asked them to.” Three parents noted that they requested but received no help from Interpol.

Police in Foreign Country

The assistance that parents received from law enforcement in the foreign country ranged from basic assistance to a high level of involvement:

- “Helped in locating and jailing abductor.”
- “Did initial check on children’s welfare.”
- “Gave me information about abductor’s whereabouts.”
- “Went to husband’s family and looked for son.”
- “Police searched home in U.K. where child may have been.”
- “Found abductor, took into custody and returned child.”
- “Took my child into protective custody; guarded my hotel with an automatic weapon.”

Several parents were frustrated by the process in the foreign country. One parent indicated the police would help “only if you have money.” Another indicated that law enforcement “just said that the family had connections.” A parent who did receive some help noted that “only certain individuals ordered by political types assisted me a little.”

#### Prosecutor and Courts

##### **Prosecutor in the U.S. :**

Three parents commended the prosecutor on the immediate action taken:

- “Sought extradition and prosecution immediately.”
- “Miami State’s Attorney’s office did its job well and quickly.”
- “Tried to get federal warrants; got state warrants.”
- “Distributed posters, [got] first lead on family . . . wrote letter in [sic] our behalf to the State Department.”

Eight parents stated that the Prosecutor filed charges against the abductor, although some comments suggested that parents felt the Prosecutor could have been more helpful:

- “Finally agreed to file charges.”
- “Not helpful but finally did bring charges against kidnapper.”

Two parents whose children were abducted from California praised the D.A. Investigator who was assigned to their cases:

- "Investigator served on task force and prosecuted the case,"
- "D.A. investigators have done much work."

The prosecutor also provided emotional support for parents:

- "Never gave up."
- "Supportive, encouraging. Kept my energy up for helping myself."

### Attorneys

#### **Attorney in the U.S.**

Comments indicated that the attorneys hired in the U.S. by parents had a range of experience and ability in dealing with parental abduction cases. As one parent stated, "one was helpful, one was not." Attorneys were used to file court documents in the U.S. and communicate with attorneys in the foreign country:

- "Bank subpoenas, tort, contempt in family court."
- "Got a temporary custody order, very fast, moved the Hague Convention--winning the battle."
- "Helped with paperwork and with finding attorney in foreign country."
- "Faxing legal documents to other countries and speaking to lawyer there."

Despite the fact that their attorneys were (as one parent reported) "totally inexperienced in matters of international abduction," two parents praised their attorneys' initiative in educating themselves quickly:

- "He had not had a case like this [before], but through research he became more knowledgeable."
- "Contacted State Department on my behalf; learned Hague Convention quickly."



Two parents who were unable to afford attorneys reported getting pro bono information over the telephone:

- "Instructed me on how to naturalize all my Maryland documents . . . over the phone, wonderful."
- "Attorneys who had experience but who wouldn't take my case because I couldn't afford an attorney [gave] quick, two-minute advice that was often good advice!"

### **Attorney Used in Foreign Country**

Fourteen parents indicated a positive opinion regarding the nature of the help received from the attorney they used and/or continue to use in the foreign country. As expected, the nature of the help received was primarily legal:

- "Understanding of foreign law."
- "Information about the law there."
- "Got hearing successfully handled."
- "Filed writ of habeas corpus."
- "Helped arrange meeting with child and explained Sweden's legal system."
- "Located and sued the abductor."
- "Very helpful investigating Hague documents."

Two parents highly commended their foreign attorneys:

- "My hero. My savior. Took on my case as a cause. Still defending my interests down there. Brilliant, highly respected, top of his field. I'd still be down there if it weren't for him."
- "He is doing everything in his power to return the child to the U.S."

### **Government Institutions and Officials**

#### **U.S. Department of State and U.S. Embassy or Consulate in foreign country**

The Department of State and U.S. embassies provided assistance in terms of information about the process of filing a Hague application and/or the laws of the country to which the child had been abducted. Some provided parents with referrals. Specific comments included:

- "Explained what will happen."
- "Good communication."
- "Assigned someone to my case in that country."

- "Getting information re: laws in Pakistan."
- "Helped with Hague treaty for Canada."
- "Assisted with Hague Convention applications."
- "Got me an appointment with Greek District Attorney."
- "Referred to attorney; legal advice."

The Department of State also provided help with passports:

- "Passport services very helpful."
- "Revocation of passport."

One parent indicated that the Department of State "told the [foreign] Central Authority it was okay to honor my custody papers."

American embassy personnel also provided or arranged welfare and whereabouts checks:

- "Conducted a few home visits."
- "Found whereabouts of my daughter."
- "Helped arrange a meeting with child. Explained how Sweden's legal system worked."
- "Verified location and well-being."
- "Gave advice, kept in touch, called family in Iran."

Six parents indicated that the embassy or consulate staff they communicated with were both helpful and sympathetic:

- "Helped to pick up son, process papers and get on plane to leave Mexico. Also helped in interviewing children."
- "The most helpful. Kept child overnight and met my plane."
- "Extremely helpful. Kept me informed."
- "Kept me informed of the law and the family. They were extremely helpful."
- "Still helping."

One parent reported that the U.S. Embassy was "quite helpful, but I went to grad school with the Ambassador."

Parents who were marginally satisfied with the Department of State and/or U.S. Embassy response also wrote in comments. One parent indicated that the embassy "[a]cted like they wanted to help, but only for show because I had [a] U.S. Senator . . . on my side." Another reported that the embassy was "very slow but tolerated my questions and finally did help me after I badgered them."

Parents who were dissatisfied also reported their feelings and experience:

- "No help. Said they were sorry about son."
- "They said they could not help."
- "Said hands were tied. NO HELP!"
- "Slow to respond. Did not locate children."
- "Zero."
- "Worthless."
- "Useless. Work actually. They make you feel like [expletive]."
- "No comment until I have my daughter back."

### **Foreign Embassy/Consulate in U.S.**

Help received by parents from the foreign embassy or consulate in the U.S. was minimal. Some help was provided with passport and/or visa inquiries:

- "Checked on passports."
- "Notarized documents."
- "Only with information on visa issuance practices."

In one case, the consulate provided a referral:

- "Got me in touch with police in Indonesia."

Six parents indicated they received a negative response:

- "They said they could not help."
- "Said hands were tied."
- "Too far away from their country."
- "Did not want to get involved."

### **Foreign Central Authority**

Comments were mixed. Some parents commended the central authority in the other country for their action:

- "Responded timely. Forced abductor to reply to court hearings."
- "Translated my documents and ordered my child into protective custody."
- "Is still helping."

One frustrated parent stated that "they won't do anything unless you carry them to the child. Comments on the interaction with staff at the central authority ranged from "very easy to deal with" to "inept and rude."

### **Foreign Court acting under the Hague Convention**

There was also mixed reaction to the court acting under the Convention. One parent reported that the court hearing the Hague case ordered the airline "to disclose [the] passenger list." A parent whose child was abducted to France reported that the court "collected my statements then denied extradition after two years of correspondence." A parent whose child was abducted to Mexico stated she is "still waiting" after two years.

### **Foreign Government Officials (non-Hague country)**

In general, the comments made by parents were negative:

- "Not interested. Dad has all the rights."
- "Sadly they cannot do anything with a dual citizenship."
- "Language barrier--couldn't communicate."
- "Only personal contacts were helpful."

### **Foreign Court (non-Hague country)**

Parents who pursued court action in a non-Hague country had mixed reports on their experience:

- "Fair, slow (for everyone) and a positive outcome. What I suffered is what everyone suffers there. If anything my case moved faster and got better attention. But it was hell."
- "Finally got my child in court."
- "[Got] limited visitation, but mind boggling delays and gender biases."

### **Missing Children's Organizations**

This category received the most positive comments from parents. A primary part of what missing children organizations did was provide helpful background information and assist with the search of children:

- "Provided helpful publications."
- "Referral of investigator."

- "All ways--communication, support, information."
- "Gave me tips [on] what to do."
- "Giving me names of people [who] can help me find my son."

Organizations also assisted with developing posters and flyers of the missing child:

- "Flyers, media."
- "Distributed posters and fliers [sic]."
- "Distributed child's pictures."
- "Got me in touch with TV station that ran ad."
- "They distributed flyers and provided advice and support."
- "Very helpful . . . kind and caring. Sent lots of posters out, called and thought of us during holidays."

Missing child organizations were also a source of emotional support for parents:

- "They were nice and understanding; they wanted to do the best that they could."
- "Have been wonderful."
- "Supportive and had other parents give me ideas."
- "Networking and emotional support."

Organizations specifically identified included NCMEC, Vanished Children's Alliance, Child Find of America, Inc., Minnesota Missing Children, Child Quest International, SOS Enfants, Missing Children's Network, and One World: For Children. One parent identified World Wide Tracers (a private investigation resource).

### **Other Helpful Sources**

One parent reported on the support she received from friends from the country to which the child had been abducted:

- "Iranian friends taught me the language, culture and religion . . . helped me keep hopeful and strengthened my faith--continually positive."

Two parents reported assistance from victim advocate programs, and one listed another left-behind parent who "was with me every step of the way. She was a constant support."

## Discussion

The study conducted by Plass, Finkelhor and Hotelling (1995) looked at law enforcement's response upon receiving a report of parental abduction. According to parents, the police took an average of three actions for each case<sup>10</sup>:

- police took a report over the phone (27%);
- an officer was sent to the scene (54%);
- the responding officer interviewed the parent (58%);
- the officer produced a written report during the interview (61%);
- police obtained photographs of child(ren) (24%);
- police referred the case to another agency (36%).

Parents surveyed in that study did not perceive the police response as appropriate. Sixty-two percent said they were "somewhat" or "very" dissatisfied with police handling of their cases (Plass, et al., 1995).

The PKPA authorizes the FBI to assist in cases of parental abduction in accordance with the Fugitive Felon Act. In most cases of parental abduction, the FBI does not intervene. The vast majority of cases (73.1%) reviewed by Hatcher and Brooks (1994) revealed no assistance from the FBI. Of those which did have FBI involvement, half of the parents reported being very satisfied with the agency's work (Hatcher & Brooks, 1994). Parents also had strong feelings when the FBI did not intervene. Over thirty-nine percent of the left-behind parents believed FBI involvement would have led to a faster recovery of their child. About one-fourth (26.3%) of these parents also stated that, based on their knowledge, their case did qualify for FBI assistance (Hatcher & Brooks, 1994).

The left-behind parent's vigilance in searching for his or her child can be one of the most significant factors in locating and recovering the child. Police involvement in locating the child can also be a critical factor. About one quarter (26.9%) of parents interviewed by Hatcher and Brooks (1994) whose children had been recovered related that it was a lead established by the parent which led to their child's recovery. Parents also related that leads established by the FBI (9.6%), a law enforcement officer (7.7%), an attorney (5.8%), a private citizen (5.8%), and missing children's organizations (3.8%) helped to recover their children. Janvier, et al., (1990) found that, of those children recovered in her study, eight were found by the police or legal authorities, five were located by missing children's organizations, three were found by the left-behind parent, and one was voluntarily returned by the abducting parent.

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<sup>10</sup>It is important to note that these results do not necessarily reflect the actual police response, but rather parents' perception of the response (Plass, et al., 1995). Police were not interviewed in this study.

Some information also exists indicating that immediate reporting to a law enforcement agency results in a greater likelihood of recovery. Agopian (1981) studied the relationship of parental action following the abduction (reporting the incident to law enforcement personnel) and recovery of the missing child. Most parents whose children had been returned had notified authorities within one week of the child's disappearance. Only two percent of children had been returned in cases in which police were notified more than one month after the abduction (Agopian, 1981).

Grasso, Ryan & Wells (1996) examined six "model" sites which prosecuted 15 or more cases of parental abduction a year. With exception of two specialized agencies, all criminal justice agencies in these sites indicated that these cases make up only five percent or less of their total case load. Even in jurisdictions with expertise, these cases are often given "low priority."

In the current study, law enforcement got mixed reviews from left-behind parents. Many were clearly uninformed of the Missing Children's Assistance Act, which mandates that law enforcement must enter the description of missing children in the NCIC-Missing Person File. Of great concern is the lack of an adequate initial response reported by two-thirds of left-behind parents. This delayed response may have contributed to the success of the abductions. In addition, a large number of law enforcement officials seemed unaware of their obligation to begin an investigation into the whereabouts of the abductor and child. On the other end of the spectrum are those law enforcement officials who were immediately responsive, offering support and referring parents to additional resources. While this was the minority of cases, their quick response clearly made a difference in how parents viewed the investigation, and made parents feel confident about the overall effort.

Nearly all parents hired or had already retained an attorney in the U.S. to pursue the return of their child, and half hired attorneys in another country. Over 50% hired a private investigator and nearly 20% actually hired a rescuer/mercenary. As with law enforcement officials, the knowledge and skills of these professionals regarding international parental abduction varied widely.

Attorneys hired in the U.S. were rated at the lowest level of knowledge by the left-behind parents -- only one-quarter had moderate to very great knowledge. About twice as many attorneys hired in the other country were rated at a moderate to great level of knowledge (49.9%). The reason for this difference may be that the attorneys from the U.S. were not necessarily hired for their previous experience in the area. In fact, 38.7% of respondents reported that they already had the attorney that they used in the U.S. Many had used them for their divorce from the abductor or previous custody proceedings. Rescuer/mercenaries were reported to have the greatest level of knowledge with 76.9% respondents reporting that they had a moderate to great level of knowledge. However, only 21 parents in the sample even contacted a rescuer/mercenary.

Reviewing the many resources contacted by left-behind parents following the abduction of their child, it becomes clear that the search is a multi-agency effort which includes the prosecutor, local law enforcement, FBI, U.S. Department of State, missing children's organization, attorneys, investigators, and other U.S. and foreign government agencies. In most cases, the individual who is attempting to coordinate this multi-agency effort is the one who may feel least prepared to do so--the left-behind parent.



### 13. RESPONDENTS' SUGGESTIONS

At the end of the questionnaire, parents were asked whether, based on their experiences, they had any suggestions to share which they believed could make international parental abduction more preventable or resolvable. Parents were also asked whether they had any suggestions to make it easier for parents to locate and recover children who were abducted by another parent to a foreign country.

Fifteen parents (22% of those who responded to this question) indicated that they believed that there should be regulations which ensure that a child has the permission of both parents before he or she is allowed to leave the country. Several of these parents also felt this joint permission should be necessary for the issuance of a passport. One parent suggested an alternative to this could be for "airlines to report to [the] INS who would maintain for a specific [period of] time . . . a list of all minor children [who are] traveling with only one parent . . . and to maintain record of [destination] country."

Other recommendations, many conveying their frustrations, included:

- "[Making] federal, state and local police assistance mandatory."
- "[G]et people in the State Department to really know what they're doing."
- "Only judges with training and experience should handle these cases. Allow judges, prosecutors and police to be sued civilly for enabling abduction."
- "Very stiff penalties for abductors."
- "Counseling for divorcing parents on prevention measures."
- "Do not issue citizenship or visas to citizens of countries who will not honor US laws in kind."
- "Find a private investigator that specializes in parental abductions."
- "Enforce court orders the first time. Don't allow the processes to drag out."
- "Some new laws protecting non-custodial parents need to be passed."
- "I think that during a divorce, counseling should be given to both parents to assure emotional stability for both parents and children. Maybe abduction could be reduced."
- "Courts need to recognize men as equally capable parents."

- "Abductor's country should release information of said nationals movement in and out of country."
- "Cut off aid to foreign countries--make abduction resolution a condition before annual aid funds are released. [The government] signed a 700 million dollar package with the Ukraine. The Ukraine would have surely resolved my case quickly to get this aid flowing."
- "Have VERY deep financial resources."
- "Forget the State Department. Forget the law enforcement. Forget support groups. Just be born with money."
- "As much as we pay in taxes, a specific department of government should be formed to deal with child abductions."

Parents had advice for working with foreign governments:

- "Don't get nasty with other countries [if] things don't go right at first, just keep trying--involve the law enforcement they are the ones who get warrant."
- "Travel to foreign country with police support/protection."
- "Don't let abductor's home laws intimidate [or] prevent you from seeking welfare of children. There is always someone willing to help."

Parents had mixed opinions on whether to use mercenaries:

- "I would never suggest re-abduction due to the emotional upset for the child unless the parent is present."
- "Mercenaries will just rip you off!"
- "Hire mercenaries immediately to retrieve child and get them back to U.S."

Some parents had more personal advice:

- "Take care of yourself. Be aware of changes in spouse's behavior, phone calls, moods, money withdrawals, any comments about discontent."
- "Send letters and cards to family members addressed to your child. There could be a small chance that it will be sent to your child."

- "Try and establish contact with a family member sympathetic to your case or an underground network with the country's people here in the U.S."
- "Take seriously [threats of] abduction."
- "Do not marry anyone from another country, or don't have children."

Parents had advice for working with foreign governments:

- "Don't give up--cultivate personal support."
- "Be persistent and look for support groups. Have information and services readily available for people in this situation."
- "People who marry foreign nationals should be aware of abduction possibilities. They should keep accurate records of addresses, phone numbers in foreign countries. People who marry outside Hague countries should be aware they are doing so."
- "Be persistent. Don't despair. Try to contact the abductor's family and beg for information. Try every possible way to get to the children. Get empowered. Pray."

Greater access to prevention methods was also listed:

- "Being a foreigner in the U.S., I wasn't acquainted with laws. I didn't know what was out there to help me prevent the abduction. I always feared that something like that could happen. My suggestion [would] be to learn as much as possible about it."

Parents also recommended steps to take to be prepared in case it happens:

- "I tried everything possible to stop my children from being abducted--but he still did it. If a parent has custody they should get the child a passport. I did this and turned them over to the children's attorney. I went and got [myself] a passport after the children were abducted--then I got my children's passport from their attorney--this was if I needed to leave the country I was ready. Make sure you have more than one certified document of your orders. Just not copies of certified documents, they all want a certified original."

One respondent recommended parents to: "contact your senators and congress persons early on. Keep in regular contact with missing children's organizations. If possible, find trusted family member or friend with flexible schedule and that has easy access to phone, computer, copy machine, postage machine and fax. Set up files for each organization or agency you work with. Keep dated notes of all meetings and phone conversations. Keep copies of all correspondence."

One parent also asked, "since the NCMEC already has access to NCIC, why not give them access to immigration files and airline manifests?"

One parent is very involved in education efforts:

- "The wealth of information and knowledge that has come out of these studies needs to be marketed to those who most certainly need it -- judges, prosecutors, law enforcement. I would personally be willing to speak free of charge to these groups. I already work voluntarily with a group of attorneys for technical assistance."

Additional comments and information from parents included interest in networking with other left-behind parents:

- "It would be nice to know other parents especially fathers who have children in France under similar circumstances to relate to and share information."
- "Be sure and contact other parents in similar situations, they are the best help."
- "If there is any way I could help other searching parents--please do not hesitate in calling me as I am sure you are aware--with the world becoming smaller these issues are only going to increase."

One respondent suggested to "hire parents who have recovered their children in the State Department."

Even parents who felt that agencies responded to their needs were not fully satisfied:

- "I have found that ALL federal agencies I worked with were quite cooperative, however, they needed specific direction from me. This meant I had to educate myself on not only the law, the problem and the duty limits of a specific agency, but then I had to direct the agency."
- "You really do it yourself. But, still, I was lucky. The resources available are great, but you have to constantly push them."

## 14. FOLLOW-UP

### Contact and Response

The 80 respondents whose names and addresses were available from the original survey were recontacted between August and October 1997 for follow-up, almost 2 years after the initial contact. Fifty (or 62.5%) responded. Ten of the follow-up respondents reported that there had been a change in their case since they had completed the original survey. Nine (18%) had since recovered their children, while one had recovered one of her 2 abducted children (the other child was still with the abductor).

Twenty (40%) of the follow-up respondents had not yet recovered their children. Many simply responded, "no new developments." A few reported hopes that recent FBI involvement in their case would result in location and recovery.

The remaining 20 responding left-behind parents had already recovered their children at the time of the original survey. Several expressed concerns about ongoing attempts by the abductor to contact them and/or the child, and the threat of another abduction. A few parents also reported taking their child to therapy and/or counseling after recovery.

### New Rate of Recovery

Compared to earlier data which indicated 30.9% (n=30) of children had been recovered, this new data showed an increased number of recoveries. Forty respondents (41.2%) had recovered all or some of their children.

### Length of Separation

When parents were recontacted, they were asked to report the dates of abduction and return (if applicable) of their children. This new information enabled researchers to compare the length of separation for those cases where there was a return to those in which the child was still separated from the parent.

Two methods were used to make this comparison. First, researchers performed an independent samples t-test to compare the means of days separated between the two groups (recovered and not recovered). There was a significant difference between the two groups ( $p < .001$ ). The average length of separation for recovered cases was 765 days (mean) or 528 days (median). The average length of separation for cases without a recovery was 2,170 days (mean) or 1,885 days (median).

Researchers then ranked the length of separation into four levels: less than 350 days; between 351 and 1,265 days; between 1,266 and 1,922 days; and over 1,922 days. A crosstab and chi square analysis indicated a significant difference ( $p < .001$ ) between the groups. Further examination showed a great number of cases at each end of the scale. For example, just under one-half (43%) of those cases with a recovery had been separated for less than 350 days, while nearly the same number (47%) of those not recovered had been separated over 1,922 days (or 5.2 years).

The mean length of separation was also compared with other variables (e.g., sex of left behind parent, whether or not abduction was to muslim country). Significant differences were found in only one case. There was a marginally significant difference ( $p < .05$ ) between cases to Hague and non-Hague countries. On average, the length of separation for a case to a country which was a party to the Hague Convention at the time of abduction was shorter (mean: 687 days) than to a non-Hague country (mean: 1,123 days).

## **E. CONCLUSION**

In looking exclusively at the population of parents left behind in the U.S. whose children were abducted to or retained in other countries, researchers were able to gather a wealth of information about parents' experiences in searching for and attempting to recover their children. Additionally, parents reported information about the responses they received from public and private agencies, including agencies that are charged with providing assistance. Finally, by focusing on the perspective of the left-behind parent, researchers were able to identify areas which need to be changed or improved, as well as those which appear to function well.

International abductions are most often carried out by mothers and fathers in their twenties and thirties with young children who have strong ties to the country to which the child is abducted and have few economic ties to the community that they leave.

Most alarming is that about 60% of children who are abducted from or retained outside of the U.S. are not returned, even though their whereabouts are often known. Many parents were concerned in advance that the other parent might abduct the child and requested preventive measures. Judges, all too often, did little or nothing to order preventive measures. Parents, coming from all walks of life, often had to be the ones educating or prompting the practitioners about how to proceed in their case. The emotional and financial toll on these parents was considerable. Combined with seeing little progress in their case and grieving over their missing child, many expressed feelings of despair and disappointment in their community and government.

The findings are of value to law enforcement, missing children's agencies, government and policy makers and call for changes in policy and practice. (See Chapter 5 for recommendations).

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## APPENDIX A: SURVEY METHODOLOGY

### 1. Design

The research team used a variety of sources to develop the Parent Survey Instrument. Earlier in the project, research staff conducted two focus groups with left-behind parents to identify common experiences, frustrations and difficulties that parents encountered in the search and recovery of their children. A total of eleven parents participated in these focus groups which were held in the Washington, D.C. area. After reviewing the information collected from the Focus Groups, research staff developed a list of primary issues to be addressed by the survey. The research team also looked at existing literature on the issue of parental abduction, specifically at other studies which examined the experiences of left-behind parents to develop questions for the survey.

The 33 page questionnaire included questions regarding:

- demographic information about abductors, left-behind parents, and abducted children;
- the actual abduction event (when and in what way it occurred);
- the legal and custodial status of the parents and child at the time of the abduction;
- events and circumstances leading up to the abduction event;
- the responses of law enforcement, prosecutors, the U.S. Department of State and other agencies and organizations to the abduction;
- how left-behind parents have dealt with foreign central authorities and/or foreign government agencies;
- the steps left-behind parents have taken in locating and recovering their children;
- agencies and organizations which have been helpful to left-behind parents;
- the primary obstacles left-behind parents faced in locating and recovering their children

Taking into account the diversity of background and education within the research sample, researchers made efforts to write the lengthy questionnaire in simple, clear language and a user-friendly format. Advisory Board members were asked for their feedback on both the content and presentation of the questionnaire. Changes were made based on these suggestions and a final draft was prepared for pilot testing.

#### Pilot Testing of Parent Survey

Parents who had participated in the focus groups were mailed a cover letter and a copy of the survey to complete. They were asked to make comments and suggestions throughout the survey, particularly if there were items which were difficult to understand. Parents were also asked to time how long it took to complete the survey. A total of 10 parents participated in pilot testing the survey, which took place over a period of about six weeks. Based on feedback gathered during pilot testing, researchers made final changes to the instrument.

## 2. Sample

### Selection of the Sample

The American Bar Association Center on Children and the Law worked with three missing children's organization to identify the sample of left-behind parents for this study: The National Center on Missing and Exploited Children (NCMEC), located in Arlington, Virginia; Child Find of America, Incorporated, located in New Paltz, New York; and Vanished Children's Alliance, located in San Jose, California. These three organizations, which maintain caseloads of both domestic and international parental abductions, agreed to participate in locating parents to participate in the study.

The three missing children's organizations reviewed their international parental abduction case files and identified cases that had the following characteristics:

- case of abduction or retention which was open or "active" at any point between 1/1/90 and 12/31/94 (at time of data collection could be open or closed);
- child was taken to or retained in a foreign country from the U.S.;
- child had been taken to or retained in Hague or non-Hague countries;
- any type of family abduction (not just parental);
- child's whereabouts could have been known or unknown at the time the case was opened, and
- child could have been recovered or not have been recovered.

In all, 333 cases were pre-selected for the sample. NCMEC identified 190 potential cases; Child Find of America, Inc. identified 50 potential cases; and Vanished Children's Alliance identified 93 potential cases which met these criteria.<sup>11</sup>

### Initial Contact with Respondents

The missing children's organizations then contacted parents individually by telephone, briefly explaining the research study and asking if they were interested in receiving a copy of the survey questionnaire. It was made clear that receiving a questionnaire would in no way obligate parents to participate in the study. In addition, organizations explained that all correspondence would come from the agency, rather than directly from the ABA and that no names, telephone numbers, or addresses would be given to the ABA or any other entity.

In addition, parents were assured that services from the organization would not be affected in any way, regardless of whether or not they participated in the study.

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<sup>11</sup>Once reviewed, four surveys were disqualified: two were cases of abduction to Puerto Rico (a U.S. territory), and two were cases in which international abduction was *threatened*, but did not actually occur.

### Adjusted Sample Size

The sample size decreased significantly during this stage. Organizations found that closer examination of the case records revealed that some were not international abduction cases. In other cases, parents did not want to receive a copy of the questionnaire, or could not be located. In addition, because some parents were registered with more than one organization, there was overlap. Researchers were able to track duplicates both during the distribution of the survey, and as completed surveys were returned to account for duplicates.

Taking into account the above factors, researchers estimated the adjusted sample size to be 166 (64 cases from NCMEC; 34 cases from Child Find of America, Inc., and 68 cases from Vanished Children's Alliance). Approximately 12 of these cases were duplicates, bringing the adjusted sample size down to 154.

### **3. Distribution of the Parent Questionnaire**

Staff of missing children's organizations developed a tracking method to identify participants by number, maintaining their anonymity. The ABA developed its own tracking method to classify completed surveys as they arrived.

Researchers used an adapted Dillman<sup>12</sup> method in distributing the survey. Initial distribution of the survey took place over a one-month period (October 1995). The ABA forwarded an adequate number of mailing materials (ABA cover letters, questionnaires, return Federal Express envelope/airbill<sup>13</sup> and instructions for return) to organizations, which assembled packets and mailed them to parents.

Between two and three weeks following initial distribution of the survey, organizations mailed out a follow-up postcard to all parents, encouraging them to complete and return the questionnaire.<sup>14</sup> Approximately six weeks following initial distribution of the questionnaires, a final mailing (cover letters and questionnaires) was sent to those parents who had not yet responded to the survey. Distribution of the survey was completed by early December 1995.

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<sup>12</sup>Dillman, D.A. (1978). Mail and telephone surveys: The total design method. New York: John Wiley.

<sup>13</sup>Respondents were provided with a pre-addressed Federal Express envelope and airbill to use when returning the completed survey. This method was used to demonstrate to parents the importance of their response, and to make returning the survey a simple process.

<sup>14</sup>Rather than sending out a follow-up postcard, Child Find of America, Inc. preferred to re-contact parents by telephone. This additional personal contact may have effected the response rate of this group of parents.

#### **4. Limitations**

The research design has some limitations which should be kept in mind as findings are reviewed. The sample of left-behind parents came from three major missing children's organizations in the United States. Parents who did not seek help from a missing children's agency (specifically NCMEC, Child Find of America or Vanished Children's Alliance) were not represented in the sample. In addition, parents who were fearful of participating due to concerns about being located by the abductor (despite established safeguards), as well as those parents who chose not to participate because they felt the experience would be too emotionally difficult, were not included. In addition, in order to register with the missing children's organizations, the child's location had to be unknown. As a result, the sample is not necessarily representative of the entire population of left-behind parents in the U.S.

The survey gathered information about abductions which were active at any point during a five year period (1990 through 1994). During this period, some organizations and institutions (e.g., U.S. Department of State, law enforcement, NCMEC) have made efforts to improve procedures and services. These improvements may not be reflected in parents' responses about their experiences.

#### **5. Representativeness of the Response Sample**

Basic demographic information on the sample of cases meeting the study criteria were provided by missing children's organizations. Researchers were able to compare selected characteristics of the overall sample with the sample of parents who responded to the survey. Characteristics which were compared included:

- state from which child was abducted;
- country to which child was abducted; and
- gender of left-behind parent and abductor.

Characteristics could be compared for about 75% of the overall sample, due to missing information.

In both the response and overall samples, California, Texas, Florida, and New York had the highest number of abductions. In the overall sample, 28.0% of the cases fitting the study criteria originated in California. This compares to 31.9% in the response sample, followed by Texas (8.1% in the overall sample compared to 6.1% in the response sample), New York (5.1% in the overall sample compared to 6.1% in the response sample), and Florida (7.7% in the overall sample compared to 4.1% in the response sample).

The countries listed most often as abduction destinations in the overall sample also appeared to be well represented in the response sample. Mexico had the highest number of abductions in both samples and was well represented in the response (18.0% in the overall sample and 17.6% in the response sample). The same holds true for Iran (4.3% of the overall sample compared to 3.0% of the response sample), and Germany (3.8% of overall sample compared to 3.0% of response). France (2.1% in the overall sample compared to 6.1% in the response sample) and Israel (2.1% of the overall sample compared to 4.1% of the response sample) both appear to have been slightly over represented in the response sample. Overall, however, those countries with the most responses reflect the numbers of the overall sample.

Perhaps the one area in which the response did not appear to reflect the overall sample was in the gender of the left-behind parent. In the overall sample, 40.0% of left-behind parents were male and 60.0% were female. Those responding to the survey were split more evenly (50.5% male and 49.5% female). Among abductors, the numbers were also slightly different. In the overall sample, 57.8% were male and 42.2% were female. The response also reflected a 50-50 split, with 49.5% males and 50.5% females.

Researchers concluded that, based on these characteristics, the sample which responded to the survey adequately represented the overall sample of parents who received the questionnaire.

## **6. Survey Response**

A total of 97 parents responded to the survey. Based on the adjusted sample size of 154, this reflects a response rate of 63 percent, a relatively high response rate especially considering the length of the questionnaire (33 pages). Fifty-one surveys with NCMEC tracking numbers were received, along with 20 surveys with tracking numbers from Child Find of America, Inc. and 23 with tracking numbers from Vanished Children's Alliance. An additional three responses came from parents who had pilot tested the survey and later completed the final version of the survey. When taking into account duplicates (parents who had received questionnaires and reminders from more than one agency), researchers learned that actual response rate by agency was 80% for NCMEC; 74% for Child Find of America, Inc., and 50% for Vanished Children's Alliance. Upon return, completed questionnaires were classified with a case number, logged, and reviewed.

## **7. Follow-up**

As explained on pages 2-110 to 2-111, we recontacted parents with additional questions after the initial contact. Of the eighty parents for whom we had contact information, fifty (62.5%) responded.



## APPENDIX B: PARENT QUESTIONNAIRE

### INTERNATIONAL PARENTAL CHILD ABDUCTION SURVEY PARENT QUESTIONNAIRE

#### SURVEY INSTRUCTIONS

##### What is the Survey About?

The American Bar Association Center on Children and the Law is conducting a survey of parents whose children have been abducted to or kept in another country by the other parent or a family member. You are one of about 300 parents throughout the country that we are inviting to participate in this survey.

The results of the survey will be used to help parents, missing children's organizations, attorneys and lawmakers understand the obstacles that searching parents face in trying to locate and recover their children who have been abducted from the United States and to make recommendations to reduce these obstacles.

##### Will Respondents' Names be Made Public?

NO. The survey is strictly confidential and your name will not be associated with any of the answers you give. This survey asks questions about you, your child or children, the abductor, and the events and circumstances surrounding the international abduction. Your participation is voluntary. While we would appreciate your honest responses to every question, you do not have to answer a question if you do not want to.

##### How Long will it Take to Complete the Survey?

The survey should take about 80 minutes to complete. Please take the time to read the instructions in each section before answering questions.

##### Where Should the Completed Survey be Sent?

We ask that you return the completed survey in the pre-paid, self-addressed white Federal Express envelope provided. You will notice there is a pre-addressed airbill included with the envelope for its return. When you are ready to return the survey, please call 1-800-GO-FEDEX (1-800-463-3339) to arrange a pick-up at your residence or office. There will be no charge to you.

If you have any questions, please contact Janet Chiancone at 202-662-1734. If you would like a summary of the results, please fill out the information on the last page of the survey.

**THANK YOU VERY MUCH!**



**INTRODUCTION**

Each section of the following survey addresses different aspects of your experience as a parent whose child has been abducted to another country. Questions ask about the circumstances surrounding the abduction, characteristics of the abductor, and the cultural and institutional obstacles you have faced in trying to recover your child.

For the purposes of this survey, the term "abductor" refers to the person who took (abduction) the child to another country or prevented (retention) the child from returning to the U.S. from another country. Abduction and retention will be used interchangeably in the survey. Please answer ALL questions, regardless of whether your child has been abducted or retained.

We would appreciate your answering as many of the questions as you can, but you may skip any question if you choose. In addition, we would like to receive back ALL surveys (even incomplete surveys). You may return the survey in the enclosed self-addressed, stamped envelope.

Please ignore items that are shaded. They are for coding and computer data entry.

**PLEASE ANSWER THE FOLLOWING QUESTIONS ABOUT YOURSELF & THE ABDUCTOR:**

*Shaded Areas  
For Coders Only*

1. Are you (check one): ☐ Male (1) ☐ Female (2) LBPSEX 1 \_\_\_\_\_
2. Is the abductor (check one): ☐ Male (1) ☐ Female (2) ABDSEX 2 \_\_\_\_\_
3. How old were you at the time that your child was abducted? LBPAGE 3 \_\_\_\_\_

<input type="checkbox"/> 20 and under (01)	<input type="checkbox"/> 36 to 40 (05)
<input type="checkbox"/> 21 to 25 (02)	<input type="checkbox"/> 41 to 45 (06)
<input type="checkbox"/> 26 to 30 (03)	<input type="checkbox"/> 46 to 50 (07)
<input type="checkbox"/> 31 to 35 (04)	<input type="checkbox"/> 46 to 50 (08)
4. How old was the abductor at the time that your child was abducted? ABDAGE 4 \_\_\_\_\_

<input type="checkbox"/> 20 and under (01)	<input type="checkbox"/> 36 to 40 (05)
<input type="checkbox"/> 21 to 25 (02)	<input type="checkbox"/> 41 to 45 (06)
<input type="checkbox"/> 26 to 30 (03)	<input type="checkbox"/> 46 to 50 (07)
<input type="checkbox"/> 31 to 35 (04)	<input type="checkbox"/> 46 to 50 (08)
5. Your racial/ethnic identification (background)? (check one): LBPRACE 5 \_\_\_\_\_

<input type="checkbox"/> White (1)	<input type="checkbox"/> Asian/Pacific Islander (4)
<input type="checkbox"/> Black (2)	<input type="checkbox"/> Native American Indian (5)
<input type="checkbox"/> Hispanic (3)	<input type="checkbox"/> Other: _____ (6)
6. The abductor's racial/ethnic identification (background)? (check one): ABDRACE 6 \_\_\_\_\_

<input type="checkbox"/> White (1)	<input type="checkbox"/> Asian/Pacific Islander (4)
<input type="checkbox"/> Black (2)	<input type="checkbox"/> Native American Indian (5)
<input type="checkbox"/> Hispanic (3)	<input type="checkbox"/> Other: _____ (6)

Are you and the abductor of different . . .

7. . . religions? ☐ Yes (1) ☐ No (2) DIFFREL 7. \_\_\_\_

8. . . ethnic backgrounds? ☐ Yes (1) ☐ No (2) DIFFETH 8. \_\_\_\_

9. . . races? ☐ Yes (1) ☐ No (2) DIFFRACE 9. \_\_\_\_

10. . . nationalities? ☐ Yes (1) ☐ No (2) DIFFNATL 10. \_\_\_\_

11. Your level of formal education (check one): LBPEdu 11. \_\_\_\_

- |  |  |
|--|--|
| <input type="checkbox"/> Not completed high school (1) | <input type="checkbox"/> 4 year college degree (4)           |
| <input type="checkbox"/> High school degree or GED (2) | <input type="checkbox"/> Some graduate school (5)            |
| <input type="checkbox"/> Some college credits (3)      | <input type="checkbox"/> Graduate or professional degree (6) |

12. The abductor's level of formal education (check one): ABDEdu 12. \_\_\_\_

- |  |  |
|--|--|
| <input type="checkbox"/> Not completed high school (1) | <input type="checkbox"/> 4 year college degree (4)           |
| <input type="checkbox"/> High school degree or GED (2) | <input type="checkbox"/> Some graduate school (5)            |
| <input type="checkbox"/> Some college credits (3)      | <input type="checkbox"/> Graduate or professional degree (6) |

13. What was your occupation at the time of abduction? \_\_\_\_\_ LBPJOB 13. \_\_\_\_

14. What was the abductor's occupation at the time of abduction? \_\_\_\_\_ ABDJOB 14. \_\_\_\_

15. Your citizenship/status in U.S.: LBPCITIZ 15. \_\_\_\_

- |   |   |
|---|---|
| <input type="checkbox"/> Citizen of U.S. (1)            | <input type="checkbox"/> Visitor's Visa (4) |
| <input type="checkbox"/> Permanent Resident of U.S. (2) | <input type="checkbox"/> Other: _____ (5)   |
| <input type="checkbox"/> Student Visa (3)               |   |

16. Abductor's citizenship/status in U.S.: ABCITIZ 16. \_\_\_\_

- |   |   |
|---|---|
| <input type="checkbox"/> Citizen of U.S. (1)            | <input type="checkbox"/> Visitor's Visa (4) |
| <input type="checkbox"/> Permanent Resident of U.S. (2) | <input type="checkbox"/> Other: _____ (5)   |
| <input type="checkbox"/> Student Visa (3)               |   |

17. Of what country or countries are you a citizen? \_\_\_\_\_ LBDCOUNT 17. \_\_\_\_

18. Of what country or countries is the abductor a citizen? \_\_\_\_\_ ABDcount 18. \_\_\_\_

43. From where was the child abducted?

ABDFROM 43. \_\_\_\_

- ☐ Your home (1) ☐ Your relative(s)' home (specify \_\_\_\_\_) (5)  
☐ Abductor's home (2) ☐ Abductor's relative(s)' home (specify \_\_\_\_\_) (6)  
☐ Babysitter's or Day care (3) ☐ Other (Specify: \_\_\_\_\_) (7)  
☐ School or Pre-school (4)

44. To what country was the child abducted or in what country was the child kept?

COUNTRY 44. \_\_\_\_

- ☐ Canada (1) ☐ Great Britain (3)  
☐ Mexico (2) ☐ Germany (4)  
☐ Other (name of country: \_\_\_\_\_) (5)

45. Was the child moved from country to country following the abduction?

TMOVED 45. \_\_\_\_

- ☐ Yes (1) \_\_\_\_\_ >46. How many countries? \_\_\_\_  
☐ No (2)  
☐ Don't know (3)

NUMCOUNTRY 46. \_\_\_\_

47. Please list the following information about your child (or children) who has been abducted:

<u>Child's Sex</u> <u>(circle)</u>	<u>Age (when</u> <u>abducted)</u>	
47. Male (1) or Female (2)	48. _____	CHOSEX 47. ____ 48. ____ CHOAGE
49. Male (1) or Female (2)	50. _____	CHTSEX 49. ____ 50. ____ CHTAGE
51. Male (1) or Female (2)	52. _____	CHHSEX 51. ____ 52. ____ CHHAGE
53. Male (1) or Female (2)	54. _____	CHFSEX 53. ____ 54. ____ CHFAGE
55. Male (1) or Female (2)	56. _____	CHVSEX 55. ____ 56. ____ CHVAGE

**ANSWER THE FOLLOWING QUESTIONS FOR ONE CHILD ONLY, EVEN IF MORE THAN ONE CHILD WAS ABDUCTED:**

57. Was a child custody order in effect at the time of the abduction?

CUSTAGMT 57. \_\_\_\_

- ☐ Yes (1)      ☐ No (2)

58. Prior to the abduction, who had legal custody of the child who was abducted?

LEGCUST 58. \_\_\_\_

- ☐ Yourself (sole legal custody) (1)  
☐ Abductor (sole legal custody) (2)  
☐ Both yourself and the abductor (joint legal custody) (3)  
☐ Other (Specify: \_\_\_\_\_) (4)

59. Prior to the abduction, who had physical custody of the child who was abducted?

PHYCUST 59. \_\_\_\_

- ☐ Yourself (sole physical custody) (1)  
☐ Abductor (sole physical custody) (2)  
☐ Both yourself and the abductor (joint physical custody) (3)  
☐ Other (Specify: \_\_\_\_\_) (4)

60. Did you have any other children living with you at the time of the abduction who were not abducted?

OTHRCH 60. \_\_\_\_

- ☐ Yes (1)      ☐ No (Skip to 62) (2)

61. Why do you think these children were not abducted?

NOTABD 61. \_\_\_\_

- ☐ Children were too young (01)  
☐ Children were too old (02)  
☐ Not the biological children of the abductor (03)  
☐ Child(ren) had special medical or physical needs (04)  
☐ Abductor preferred to take only boy(s) (05)  
☐ Abductor preferred to take only girl(s) (06)  
☐ Lack of opportunity/too difficult logistically (07)  
☐ Other reason: \_\_\_\_\_ (08)  
☐ Don't know (09)

**NOW WE HAVE SOME QUESTIONS ABOUT THE ABDUCTOR BEFORE THE ABDUCTION.**

62. Prior to the abduction was the abductor abusive toward you? DVIOU 62. \_\_\_\_
- ☐ Yes (1) \_\_\_\_\_>Type of abuse (check all that apply):  
☐ No (2) [Skip to Question 68] ☐ Physically abusive (1) DVPHY 63. \_\_\_\_  
☐ Psychologically abusive (1) DVPSY 64. \_\_\_\_  
☐ Sexually abusive (1) DVSEX 65. \_\_\_\_
65. Did you request a restraining order or protection order prior to the abduction? RESTORD 66. \_\_\_\_
- ☐ Yes (1) \_\_\_\_\_> 67. Was one granted? ☐ Yes (1) ☐ No (2) ROGRANT 67. \_\_\_\_  
☐ No (2)
68. Prior to the abduction was the abductor abusive or seriously neglectful toward the child or children? ABUSE 68. \_\_\_\_
- ☐ Yes (1) \_\_\_\_\_>Type of abuse or neglect (check all that apply):  
☐ No (2) [Skip to Question 74] ☐ Physically abusive (1) ABPHY 69. \_\_\_\_  
☐ Psychologically abusive (1) ABPSY 70. \_\_\_\_  
☐ Sexually abusive (1) ABSEX 71. \_\_\_\_  
☐ Serious neglect of children's needs (1) SRNEG 72. \_\_\_\_
73. Did you report the abuse or neglect? REPABU 73. \_\_\_\_
- ☐ Yes, prior to the abduction (1)  
☐ Yes, after the abduction (2)  
☐ No (3)
74. Whether or not there was abuse within your family, did the abductor ever accuse you of being neglectful, or physically, psychologically or sexually abusive toward your children? LBPABU 74. \_\_\_\_
- ☐ Yes (1) ☐ No (2)
75. Did the abductor ever seek or obtain a restraining order against you? ROLBP 75. \_\_\_\_
- ☐ Yes (1) \_\_\_\_\_> 76. Was one granted? ☐ Yes (1) ☐ No (2) ROLGRT 76. \_\_\_\_  
☐ No (2)
- Did the abductor ever threaten . . .
77. . . . that you would never see your child again? ☐ Yes (1) ☐ No (2) SEECHLD 77. \_\_\_\_
78. . . . your life? ☐ Yes (1) ☐ No (2) LIFE 78. \_\_\_\_
79. . . . the life of your child? ☐ Yes (1) ☐ No (2) CHLIFE 79. \_\_\_\_
80. . . . anyone else's life? ☐ Yes (1) ☐ No (2) ANYLIFE 80. \_\_\_\_

81. How long after the abduction were you first aware that an abduction had taken place?

TIMEAFT 81

- ☐ Immediately (1)  
☐ At end of lawful or agreed upon visitation period (2)  
☐ Other: \_\_\_\_\_ (3)

82. How long after your initial concern about your child's whereabouts, did you contact a law enforcement agency?

TIMELEA 82

- |   |   |
|---|---|
| <input type="checkbox"/> Immediately (under 2 hrs) (01) | <input type="checkbox"/> 8 days to 2 weeks after (06)                       |
| <input type="checkbox"/> 2 to 12 hours after (02)       | <input type="checkbox"/> 3 to 4 weeks after (07)                            |
| <input type="checkbox"/> 13 to 24 hours after (03)      | <input type="checkbox"/> More than 1 month after (08)                       |
| <input type="checkbox"/> 2 to 3 days after (04)         | <input type="checkbox"/> N/A. Never contacted a law enforcement agency (88) |
| <input type="checkbox"/> 4 to 7 days after (05)         |   |

83-88. Please indicate if the law enforcement officer you initially spoke with told you any of the following things about your case (check all that apply):

- ☐ Informed you that the child(ren) had to be missing for a prescribed period of time before law enforcement would take information. (1)
- ☐ Informed you that they would not take case information because saw the abduction as a domestic situation. (1)
- ☐ Informed you of the need to have a custody order before law enforcement action could be taken (1)
- ☐ Informed you that could not take action because not a violation of state criminal law. (1)
- ☐ Informed you that they could not do anything to help you unless there was evidence the child was taken out of state. (1)
- ☐ Other response: \_\_\_\_\_ (1)

MISBEF 83

NOCASE 84

NEED CO 85

NOVIOL 86

OUTSTATE 87

OTHRLEA 88

89. How long after your initial concern about your child's whereabouts did you contact an attorney?

TIMEATTY 89

- |   |  |
|---|--|
| <input type="checkbox"/> Immediately (under 2 hrs) (01) | <input type="checkbox"/> 8 days to 2 weeks after (06)          |
| <input type="checkbox"/> 2 to 12 hours after (02)       | <input type="checkbox"/> 3 to 4 weeks after (07)               |
| <input type="checkbox"/> 13 to 24 hours after (03)      | <input type="checkbox"/> More than 1 month after (08)          |
| <input type="checkbox"/> 2 to 3 days after (04)         | <input type="checkbox"/> N/A. Never contacted an attorney (88) |
| <input type="checkbox"/> 4 to 7 days after (05)         |  |



Did the abduction occur . . . (check all that apply)

90. . . . before you or the abductor filed for custody?

BEFCUST 90

☐ Yes (1) ☐ No (2) ☐ N/A. No custody suit was planned (8)

91. . . . while a custody suit was pending?

PENDCO 91

☐ Yes (1) ☐ No (2)

92. . . . during a court-ordered visitation?

CTVISIT 92

☐ Yes (1) ☐ No (2)

93. . . . before a custody order was sought but while restraining orders were in effect prohibiting the removal of the child from the jurisdiction?

RESTRAIN 93

☐ Yes (1) ☐ No (2)

94. Was the abduction in violation of a court order?

VIOLAT 94

☐ Yes (1) ☐ No (2)

**AFTER AN ABDUCTION HAS OCCURRED, PARENTS MAY LEARN THAT THE ABDUCTOR HAD TAKEN STEPS TO PLAN THE ABDUCTION.**

95-108. BASED ON WHAT YOU NOW KNOW ABOUT THE ABDUCTION, WHICH OF THE FOLLOWING ACTIONS DID THE ABDUCTOR TAKE OR PREPARE FOR THE ABDUCTION: (Check all that apply):

☐ Saved money or waited for expected cash payment (e.g. tax return) (1)

CASH 95

☐ Liquidated assets (e.g. sold business, investments, furniture, etc.) (1)

ASSETS 96

☐ Quit or changed jobs (1)

CHJOB 97

☐ Moved residence (1)

MOVED 98

☐ Preparatory visit to country to which child was later abducted (1)

VISCNT 99

☐ Kept the child late after a visit prior to actual abduction (1)

KPTLATE 100

☐ Received visits from friends or family members from another country to assist the abductor (1)

FAMVIS 101

☐ Applied for a visa or passport for the child from U.S. State Department (1)

CHPASUS 102

☐ Applied for a visa or passport for the child from embassy or consulate of another country (1)

CHPASOT 103

☐ Gathered, destroyed or hid legal documents and records (birth certificates, school records) (1)

HIDDOCU 104

☐ Changed religions or joined a sect or secret society (1)

JOINSECT 105

☐ Other planning actions (Describe: \_\_\_\_\_) (1)

OTRPLAN 106

☐ Secretly involved the child in the planning (1)

INVCHILD 107

☐ Don't know of any actions (1)

NOPLAN 108

109. Are you aware of any assistance the abductor received to help carry out the abduction or enable it to be successful?

ASSIST 109

☐ Yes (1) ☐ No (skip to 200) (2)

110-99. Indicate who provided the abductor with assistance and what type of assistance they provided.

**CHECK THOSE WHO  
PROVIDED ASSISTANCE**

**TYPE OF ASSISTANCE:  
(Only answer for those you checked)**

☐ Abductor's family (Relationship: \_\_\_\_\_) (1) —————>

<input type="checkbox"/> Financial (1)	ASTFAM 110	FAMFIN 111
<input type="checkbox"/> Emotional (1)		FAMEM 112
<input type="checkbox"/> Legal (1)		FAMLEG 113
<input type="checkbox"/> Household and/or childcare (1)		FAMHHC 114
<input type="checkbox"/> Help abducting child (1)		FAMAC 115
<input type="checkbox"/> Help getting passport/visa (1)		FAMPPV 116
<input type="checkbox"/> Help hiding child after abduction (1)		FAMHIDE 117
<input type="checkbox"/> Other (Specify: _____) (1)		FAMTHR 118

☐ Abductor's friends (1) —————>

<input type="checkbox"/> Financial (1)	ASTFRD 119	FRDFIN 120
<input type="checkbox"/> Emotional (1)		FRDEM 121
<input type="checkbox"/> Legal (1)		FRDLEG 122
<input type="checkbox"/> Household and/or childcare (1)		FRDHHC 123
<input type="checkbox"/> Help abducting child (1)		FRDAC 124
<input type="checkbox"/> Help getting passport/visa (1)		FRDPPV 125
<input type="checkbox"/> Help hiding child after abduction (1)		FRDHIDE 126
<input type="checkbox"/> Other (Specify: _____) (1)		FRDTHR 127

☐ Members of abductor's ethnic community (1) —————>

<input type="checkbox"/> Financial (1)	ASTETH 128	ETHFIN 129
<input type="checkbox"/> Emotional (1)		ETHEM 130
<input type="checkbox"/> Legal (1)		ETHLEG 131
<input type="checkbox"/> Household and/or childcare (1)		ETHHHC 132
<input type="checkbox"/> Help abducting child (1)		ETHAC 133
<input type="checkbox"/> Help getting passport/visa (1)		ETHPPV 134
<input type="checkbox"/> Help hiding child after abduction (1)		ETHHIDE 135
<input type="checkbox"/> Other (Specify: _____) (1)		ETHTHR 136

☐ Abductor's attorney (1) —————>

<input type="checkbox"/> Financial (1)	ASTATY 137	ATYFIN 138
<input type="checkbox"/> Emotional (1)		ATYEM 139
<input type="checkbox"/> Legal (1)		ATYLEG 140
<input type="checkbox"/> Household and/or childcare (1)		ATYHHC 141
<input type="checkbox"/> Help abducting child (1)		ATYAC 142
<input type="checkbox"/> Help getting passport/visa (1)		ATYPPV 143
<input type="checkbox"/> Help hiding child after abduction (1)		ATYHIDE 144
<input type="checkbox"/> Other (Specify: _____) (1)		ATYTHR 145

**CHECK THOSE WHO  
PROVIDED ASSISTANCE**

☐ Your family (1) \_\_\_\_\_>

**TYPE OF ASSISTANCE:  
(Only answer for those you checked)**

☐ Financial (1) ASTYEM 146 YEMFIN 147  
☐ Emotional (1) YEMEM 148  
☐ Legal (1) YEMLEG 149  
☐ Household and/or childcare (1) YEMHHC 150  
☐ Help abducting child (1) YEMAC 151  
☐ Help getting passport/visa (1) YEMPPV 152  
☐ Help hiding child after abduction (1) YEMHDE 153  
☐ Other (Specify: \_\_\_\_\_) (1) YEMTHR 154

☐ Your friends (1) \_\_\_\_\_>

☐ Financial (1) ASTYFD 155 YFDFIN 156  
☐ Emotional (1) YFDEM 157  
☐ Legal (1) YFDLEG 158  
☐ Household and/or childcare (1) YFDHHC 159  
☐ Help abducting child (1) YFDAC 160  
☐ Help getting passport/visa (1) YFDPPV 161  
☐ Help hiding child after abduction (1) YFDHDE 162  
☐ Other (Specify: \_\_\_\_\_) (1) YFDTHR 163

☐ Your attorney (1) \_\_\_\_\_>

☐ Financial (1) ASTYAT 164 YATFIN 165  
☐ Emotional (1) YATEM 166  
☐ Legal (1) YATLEG 167  
☐ Household and/or childcare (1) YATHHC 168  
☐ Help abducting child (1) YATAC 169  
☐ Help getting passport/visa (1) YATPPV 170  
☐ Help hiding child after abduction (1) YATHDE 171  
☐ Other (Specify: \_\_\_\_\_) (1) YATTHR 172

☐ Foreign consulate or embassy in U.S.  
(Name of country: \_\_\_\_\_) (1) \_\_\_\_\_>

☐ Financial (1) ASTEMB 173 EMBFIN 174  
☐ Emotional (1) EMBEM 175  
☐ Legal (1) EMBLEG 176  
☐ Household and/or childcare (1) EMBHHC 177  
☐ Help abducting child (1) EMBAC 178  
☐ Help getting passport/visa (1) EMBPPV 179  
☐ Help hiding child after abduction (1) EMBHDE 180  
☐ Other (Specify: \_\_\_\_\_) (1) EMBTHR 181

☐ Foreign government (country: \_\_\_\_\_) (1) \_\_\_\_\_>

☐ Financial (1) ASTFGV 182 FGVFIN 183  
☐ Emotional (1) FGVEM 184  
☐ Legal (1) FGVLEG 185  
☐ Household and/or childcare (1) FGVHHC 186  
☐ Help abducting child (1) FGVAC 187  
☐ Help getting passport/visa (1) FGVPPV 188  
☐ Help hiding child after abduction (1) FGVHDE 189  
☐ Other (Specify: \_\_\_\_\_) (1) FGVTHR 190

**CHECK THOSE WHO  
PROVIDED ASSISTANCE**

**TYPE OF ASSISTANCE  
(Only answer for those you checked)**

☐ Other: (1) \_\_\_\_\_>

<input type="checkbox"/> Financial (1)	ASTATY 191	ATYFIN 192
<input type="checkbox"/> Emotional (1)		ATYEM 193
<input type="checkbox"/> Legal (1)		ATYLEG 194
<input type="checkbox"/> Household and/or childcare (1)		ATYHHC 195
<input type="checkbox"/> Help abducting child (1)		ATYAC 196
<input type="checkbox"/> Help getting passport/visa (1)		ATYPPV 197
<input type="checkbox"/> Help hiding child after abduction (1)		ATYHDE 198
<input type="checkbox"/> Other (Specify: _____) (1)		ATYTHR 199

200. If the child has not yet been recovered, are you aware of any support or assistance still being provided to the abductor to prevent you from recovering your child?

CURAST 200

☐ N/A. Child has been recovered (8)

☐ No (skip to 202) (2)

☐ Yes (1) \_\_\_\_\_>201. Please describe:

RECSTAT201

202-15. At the time of the abduction, what was the relationship of the abductor to the country to which the child was taken? (Check all that apply).

☐ Citizen of that country only (not U.S. citizen) (1)

CITCOUNT 202

☐ Dual national of U.S. and that country (1)

DUAL 203

☐ Had family in that country (1)

FAMCOUNT 204

☐ Had close friends in that country (1)

FRDCOUNT 205

☐ Spoke language of that country (1)

LANGUAGE 206

☐ Grew up mainly in that country (1)

GREWUP 207

☐ Had lived in that country as a child (1)

LIVEDCH 208

☐ Had lived in that country as an adult (1)

LIVEDAD 209

☐ Had visited that country (1)

HADVIST 210

☐ Same race or ethnicity as many in that country (1)

SAMERACE 211

☐ Was employed or owned business/investments in that country (1)

EMPLCNT 213

☐ Other relationship: \_\_\_\_\_ (1)

OTRRELAT 214

☐ Had no known relationship to country (1)

NORELAT 215

216-18. Based on what you know about the abductor, what do you believe were some of the abductor's motivations for taking the children to another country? From the following list select what you believe were the top 3 motivations and rank them in order from 1 to 3. (If the primary motivations are not on this list, you may write them in under "other" and then rank them.)

\_\_\_ Was homesick for the other country and/or family (01)

REASONE 216: \_\_\_

\_\_\_ Wanted family in other country to see child or child to see family (02)

REASTWO 217: \_\_\_

\_\_\_ Did it for revenge or spite against you (03)

REASTHR 218: \_\_\_

\_\_\_ Unable to accept the end of your marriage or relationship (04)

\_\_\_ Upset or angry about recent or upcoming custody or visitation order (05)

\_\_\_ Upset or angry about recent or upcoming child support or alimony decision (06)

\_\_\_ Believed needed to protect the child from abuse or neglect (07)

\_\_\_ Believed you were a bad or unworthy parent (08)

\_\_\_ Was frustrated with the legal process (09)

\_\_\_ Didn't feel there was enough access to the child (10)

\_\_\_ Felt American society was a bad place for a child to be raised (11)

\_\_\_ Disagreed on how you were raising your child (religion, discipline, etc.) (12)

Please Explain: \_\_\_\_\_

\_\_\_ Wanted to be an active parent but did not want to live in U.S. (13)

\_\_\_ Other reason: \_\_\_\_\_ (14)

**NOW WE HAVE QUESTIONS ABOUT YOUR CHILD'S LOCATION DURING THE ABDUCTION.**

219. Has your child been located?  
(Answer Yes if the whereabouts of your child had always been known.)

LOCATED 219: \_\_\_

☐ Yes (1)

☐ No (skip to 223) (2)

220. How long after the abduction was the child located (but perhaps not yet returned)?

TIMELOC 220: \_\_\_

☐ Location has always been known (01)

☐ Within 1 month of the abduction (02)

☐ 1 to 3 months after the abduction (03)

☐ 4 to 6 months after the abduction (04)

☐ More than 6 months after the abduction (05)

☐ 7 to 12 months after the abduction (06)

☐ 13 to 24 months after the abduction (07)

☐ 25 to 36 months after the abduction (08)

☐ More than 3 years after the abduction (specify: \_\_\_\_\_) (09)

☐ Has not been located (88)

221. Has your child been recovered? ☐ Yes (1)  
☐ No (skip to 223) (2)

RECOVER 221

222. How long after the recovery was it until you were reunited  
(for the first time) with your child?

TIMEREC 222

- ☐ Reunited the same day child was picked up (1)  
☐ 24 hours after recovery (2)  
☐ 2 to 3 days after the recovery (3)  
☐ 4 to 7 days after the recovery (4)  
☐ 8 to 30 days after the recovery (5)  
☐ More than 30 days after the recovery (Specify: \_\_\_\_\_) (6)

223. Did the abductor and/or your child contact you at any time after the abduction?

CONTACT 223

- ☐ Yes (1) ☐ No (skip to 232) (2)

224-7. How were you contacted? (Check all that apply)

- ☐ By letter (1)  
☐ Telephone contact (1)  
☐ Through another person (Relationship: \_\_\_\_\_) (1)  
☐ Other contact: \_\_\_\_\_ (1)

LETTER 224

PHONE 225

THRUPEPS 226

OTRCONT 227

228. How soon after the abduction were you contacted  
by the abductor and/or your child?

SOONCON 228

- ☐ Within the first 24 hours (1)  
☐ Between 2 and 7 days following the abduction (2)  
☐ 8 to 30 days after the abduction (3)  
☐ 1 to 3 months following abduction (4)  
☐ 4 to 6 months following abduction (5)  
☐ Over 6 months following abduction (6)  
☐ Not contacted (8)

229-31. Did you attempt to negotiate with the abductor to have the child returned voluntarily?

NEGOT 229

☐ No (skip to 232) (2)

☐ Yes (1) ———> Was this...

... prior to your taking legal action?

- ☐ Yes (1)  
☐ No (2)

PRIORLEG 230

... prior to your involving law enforcement?

- ☐ Yes (1)  
☐ No (2)

PRIORLEA 231

232-6. Please check any of the information you have about where your child (or children) is currently living, or, if your child has been recovered, check any of the information you had about where your child was living prior to recovery.

- ☐ Know or knew the country they are/were living in (1) KNOWCNT 232
- ☐ Know or knew the specify city/town they are/were living in (1) KNOWCIT 233
- ☐ Know or knew the address they are/were living at (1) KNOWADD 234
- ☐ Other information: \_\_\_\_\_ (1) KNOWOTR 235
- ☐ Have or had no information about where child is/was living (1) NOTHING 236

237-41. With whom is or was your child living during the abduction? (Check all that apply).

- ☐ Living with the abductor (1) LIVABD 237
- ☐ Living with family of the abductor (Relationship to child: \_\_\_\_\_) (1) LIVABFAM 238
- ☐ Living with friends of the abductor (1) LIVABFRD 239
- ☐ Living with abductor's current spouse (1) LIVABDSP 240
- ☐ Other: \_\_\_\_\_ (1) LIVOTR 241

**IF YOUR CHILD HAS BEEN RECOVERED, OR IF YOU KNOW THE LOCATION OF YOUR CHILD, PLEASE ANSWER THE FOLLOWING QUESTIONS. OTHERWISE, SKIP TO 243**

242. How did you find out where your child is (was) living during the abduction? [Describe how you learned the location of where in that country your child is (was) located (e.g., told by abductor's family; located by law enforcement]. HOWLIVE 242

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**THE FOLLOWING QUESTIONS ARE REGARDING STEPS YOU OR SOMEONE ON YOUR BEHALF TOOK, BOTH IN THE U.S. AND IN ANOTHER COUNTRY, TO ATTEMPT TO LOCATE AND RECOVER YOUR CHILD.**

243-65. From which of the following sources did you seek assistance while trying to locate and recover your child?  
(Check responses)

<u>First</u> <u>24 hours (1)</u>	<u>First</u> <u>month (2)</u>		
<input type="checkbox"/>	<input type="checkbox"/>	Your family	SEEKFAM 243. __
<input type="checkbox"/>	<input type="checkbox"/>	Your friends	SEEKFRD 244. __
<input type="checkbox"/>	<input type="checkbox"/>	Family of the abductor	SKABDFAM 245. __
<input type="checkbox"/>	<input type="checkbox"/>	Friends of the abductor	SKABDFRD 246. __
<input type="checkbox"/>	<input type="checkbox"/>	Police/Sheriff or other Law enforcement	POLSHER 247. __
<input type="checkbox"/>	<input type="checkbox"/>	Attorney in U.S	USATTY 248. __
<input type="checkbox"/>	<input type="checkbox"/>	Courts in U.S. for subpoenas, custody orders	USCOURT 249. __
<input type="checkbox"/>	<input type="checkbox"/>	U.S. State Department	USSTATE 250. __
<input type="checkbox"/>	<input type="checkbox"/>	Prosecutor/District Attorney	PROSEC 251. __
<input type="checkbox"/>	<input type="checkbox"/>	Federal Bureau of Investigation (FBI)	FBI 252. __
<input type="checkbox"/>	<input type="checkbox"/>	U.S. Embassy or Consulate in another country	USCONSUL 253. __
<input type="checkbox"/>	<input type="checkbox"/>	National Center for Missing & Exploited Children (NCMEC)	NCMEC 254. __
<input type="checkbox"/>	<input type="checkbox"/>	State missing children's clearinghouses	CLEARING 255. __
<input type="checkbox"/>	<input type="checkbox"/>	Missing child non-profit organizations	NONPROF 256. __
<input type="checkbox"/>	<input type="checkbox"/>	Schools	SCHOOLS 257. __
<input type="checkbox"/>	<input type="checkbox"/>	Bureau of Vital Statistics (e.g., flag birth records)	BVA 258. __
<input type="checkbox"/>	<input type="checkbox"/>	Foreign embassy or Consul in U.S	FORCONSUL 259. __
<input type="checkbox"/>	<input type="checkbox"/>	Private Investigator	PRIVINV 260. __
<input type="checkbox"/>	<input type="checkbox"/>	Mercenary/Rescuer	MERCEN 261. __
<input type="checkbox"/>	<input type="checkbox"/>	Courts in another country	FORCOURT 262. __
<input type="checkbox"/>	<input type="checkbox"/>	Psychics	PSYCHIC 263. __
<input type="checkbox"/>	<input type="checkbox"/>	Attorney in another country	FORATTY 264. __
<input type="checkbox"/>	<input type="checkbox"/>	Other contact: _____	OTRSEEK 265. __



**266-9. Following the abduction, did you use . . .**

... an attorney in the U.S.?	<input type="checkbox"/> Yes (1)	<input type="checkbox"/> No (2)	LAWYUS 266
... an attorney overseas?	<input type="checkbox"/> Yes (1)	<input type="checkbox"/> No (2)	LAWYFOR 267
... a private investigator?	<input type="checkbox"/> Yes (1)	<input type="checkbox"/> No (2)	PI 268
... a rescuer/mercenary?	<input type="checkbox"/> Yes (1)	<input type="checkbox"/> No (2)	RESCUER 269

**270-73. How did you learn about these individuals that you used? (only answer if you used these individuals; otherwise write N/A.)**

... attorney in the U.S.?	_____	ENDLAWUS 270
... attorney overseas?	_____	ENDLAWFO 271
... private investigator?	_____	ENDPI 272
... rescuer/mercenary?	_____	ENDRESC 273

**274-7 Using the following scale, rate their level of knowledge about international parental child abduction (check one for each):**

(If you did not hire one or more of these individuals, check "Not Used".)

	Little or no knowledge (1)	Some knowledge (2)	Moderate knowledge (3)	Great knowledge (4)	Very great knowledge (5)	Not Used (8)	
Attorney hired in U.S.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	USKNO 274
Attorney hired in other country	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FORKNO 275
Private investigator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	PIKNOW 276
Rescuer/mercenary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	RESKNO 277

278-85. Which of the following resources or strategies did you, or others on your behalf, use to attempt to locate and/or recover your child? Check all that apply.

- ☐ Contact abductor's friends and family (1)
- ☐ Mediation services from missing children's organization (1)
- ☐ Trace telephone bills or credit card statements (1)
- ☐ Make and distribute missing child posters (1)
- ☐ Hold fund raisers in community (1)
- ☐ Spoke with reporters from TV, radio, newspaper, magazines (1)
- ☐ Telephone and/or visit members of Congress (1)
- ☐ Other strategies and resources. Describe: \_\_\_\_\_ (1)

CONTEFF 278 \_  
 MEDIATE 279 \_  
 TRACE 280 \_  
 POSTER 281 \_  
 FUNDRAI 282 \_  
 REPORTER 283 \_  
 CONGRESS 284 \_  
 OTSTRAT 285 \_

286. Describe any particularly effective search techniques that you have used or heard of that you think other searching parents should know about.

EFFECT 286 \_

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287. Were you concerned that an abduction might occur prior to its actually happening?

CONCERN 287 \_

- ☐ No (Skip to 297) (2)    ☐ Yes (1)

288-296. To whom did you express your concerns about a possible abduction?

Using the following scale, how seriously do you think they took your concerns about abduction? (Check one for each person told)

Check those you told:	Not at all seriously (1)	Somewhat seriously (2)	Moderately seriously (3)	Very seriously (4)	
<input type="checkbox"/> Family member(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDFAM 288 _
<input type="checkbox"/> Friend(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDFRD 289 _
<input type="checkbox"/> Your attorney	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDATY 290 _
<input type="checkbox"/> Courts/Judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDJUD 291 _
<input type="checkbox"/> Police or Sheriff's office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDPOL 292 _
<input type="checkbox"/> Dist. Attorney/Prosecutor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDPROS 293 _
<input type="checkbox"/> Missing children's organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDMCO 294 _
<input type="checkbox"/> Court-appt. Therapist/ Mental health prof.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDTHER 295 _
<input type="checkbox"/> Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	TOLDOTR 296 _

**THESE QUESTIONS HAVE TO DO WITH ANY CRIMINAL CHARGES THAT HAVE BEEN FILED AGAINST THE ABDUCTOR. IF NO CRIMINAL CHARGES WERE FILED, ANSWER 297 and 298, AND SKIP TO 311.**

297. Has the abductor been located? ☐ Yes (1) ☐ No (2) ABDLOCAT 297

298. Were any criminal charges filed against the abductor and/or accomplice(s)? CHARGES 298

- ☐ Yes, the abductor only (1)
- ☐ Yes, both the abductor and the accomplice(s) (2)
- ☐ Yes, accomplice(s) only (3)
- ☐ No (4)

299. Check the type of charges that were filed: TYPECHG 299

- ☐ Felony charges (child stealing, custodial interference, parental kidnapping) (1)
- ☐ Misdemeanor charges (2)
- ☐ Other charges: \_\_\_\_\_ (3)

300-10. If the abductor WAS charged, please check any of the following that have occurred.

- |   |               |
|---|---------------|
| <input type="checkbox"/> Not charged (1)  | NOCHG 300     |
| <input type="checkbox"/> Abductor was arrested (1)  | ARREST 301    |
| <input type="checkbox"/> Abductor was extradited from: _____ to _____ (1)                 | EXTRAD 302    |
| <input type="checkbox"/> Abductor returned voluntarily (e.g., extradition was waived) (1) | VOLRET 303    |
| <input type="checkbox"/> Charges were dropped (1)   | CHDROP 304    |
| <input type="checkbox"/> Abductor pleaded guilty (1)                                      | PLEDGUIL 305  |
| <input type="checkbox"/> Abductor convicted (1)   | CONVICT 306   |
| <input type="checkbox"/> Abductor placed on probation (1)                                 | PROBAT 307    |
| <input type="checkbox"/> Abductor sentenced to restitution (1)                            | RESTITU 308   |
| <input type="checkbox"/> Abductor sentenced to incarceration (1)                          | INCARC 309    |
| <input type="checkbox"/> Victim assistance provided (1)                                   | VICASSIST 310 |

**PRIOR TO AN ABDUCTION, MOST PARENTS AND MANY ATTORNEYS ARE UNAWARE OF MEASURES THEY CAN REQUEST WHICH SOMETIMES CAN HELP PREVENT AN ABDUCTION.**

311. Did you seek any preventive measures prior to the abduction? PREVENT 311

- ☐ Yes (skip to 313) (1) ☐ No (2)

312. What kept you from seeking preventive measures? KEPTPREV 312

- ☐ No one ever told you about preventive measures (1)
- ☐ You were discouraged from taking preventive measures (2)  
(Who discouraged you? \_\_\_\_\_)
- ☐ Other: \_\_\_\_\_ (3)

313-27. Check any of the following steps you took to try and prevent an abduction, and indicate the result:

Prevention attempt (check if attempted)

Result (check one)

<input type="checkbox"/> Sought custody order prior to abduction (1)	Was custody order issued?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	ISSUECO 313
<input type="checkbox"/> Sought court order requiring the posting of a bond. (1)	Was order issued?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	ISSUEBO 314
<input type="checkbox"/> Sought court order prohibiting removal of the child from the jurisdiction. (1)	Was order issued?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	ISSUERE 315
<input type="checkbox"/> Sought supervised visitations (1)	Were supervised visits ordered?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	ORDSUP 316
<input type="checkbox"/> Sought suspension/termination of visits between abductor and children (1)	Was suspension/termination ordered?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	VISTERM 317
<input type="checkbox"/> Sought a warning, in court order, that breach of custody/visitation order may subject violator to civil and/or criminal penalties (1)	Was warning given?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	WARNING 318
<input type="checkbox"/> Sought court-ordered passport restrictions (e.g. restrictions on issuance, surrender of passports prior to visit overseas) (1)	Were restrictions issued?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	RESTRICT 319
<input type="checkbox"/> Sought passport denial or revocation through U.S. State Department (1)	Was passport denied or revoked?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	REVOKELUS 320
<input type="checkbox"/> Sought passport denial or revocation through foreign embassy Name of country: _____ (1)	Was passport denied or revoked?	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (2)	REVOKEFO 321
<input type="checkbox"/> Tried to get control of the child's passport (1)			PASSPCON 322
<input type="checkbox"/> Told child's school or day care that the child was not permitted to leave with the other parent (1)			DAYCARE 323
<input type="checkbox"/> Kept the child from visiting the other parent (1)			NOVISIT 324
<input type="checkbox"/> Gathered information about abductions from missing children's organizations, the State Department, a state clearinghouse, or NCMEC (1)			GATHINFO 325
<input type="checkbox"/> Had the child photographed and/or fingerprinted for identification purposes (1)			PHOTOS 326
<input type="checkbox"/> Other preventive actions: _____ (1)			PREVACT 327

328-

335. How do you think other parents should be informed about ways to possibly prevent abductions?

- ☐ Parent education courses at time of divorce (1)  
☐ Parent education through the school system (1)  
☐ By their divorce attorneys (1)  
☐ Through public service announcements on TV and radio (1)  
☐ Hospitals when child is born (1)  
☐ Counseling prior to marriage between U.S. citizen and foreign national (1)  
☐ Educate grandparents through senior publications (1)  
☐ Other suggestions: \_\_\_\_\_ (1)

EDIVOR 328

EDSCHL 329

DIVATY 330

PSA 331

HOSP 332

COUNS 333

GRAND 334

OTRED 335

**THE FOLLOWING QUESTIONS ASK ABOUT THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION.**

336. Did you file an application under the Hague Convention on the Civil Aspects of International Child Abduction?

HAPPLIC 336

- ☐ Yes (1)  
☐ No, because country to which child was abducted was not a party to the Hague at the time of the abduction. (Skip to 401) (2)  
☐ No, did not know of the existence of the Hague convention (Skip to 401) (3)  
☐ No, chose to pursue other remedies instead of the Hague (Skip to 401) (4)

337. How long after the abduction occurred did you learn about the Hague Convention?

WHENAPP 337

- ☐ Already knew about it (1)  
☐ Within first week of abduction (2)  
☐ 8 to 30 days after abduction (3)  
☐ 1 to 3 months after abduction (4)  
☐ 4 to 6 months after abduction (5)  
☐ 7 to 9 months after abduction (6)  
☐ Over 1 year after abduction (7)

338. How did you first find out about it?

LRNHAG 338

- ☐ Attorney (1)  
☐ Missing children's organization (2)  
☐ Police (law enforcement) (3)  
☐ U.S. State Department (4)  
☐ Other: \_\_\_\_\_ (5)

339. Did you submit your application:

WHIRAPP 339

- ☐ Through the U.S. Central Authority (U.S. State Department) (1)  
☐ Directly to the Central Authority in another country (2)  
☐ Other (Specify: \_\_\_\_\_) (3)

340. How long following the abduction did you submit your Hague application?

FOLSUBM 340

- ☐ Within 1 month of the abduction (1) ☐ 7 to 9 months after abduction (4)  
☐ 1 to 3 months after abduction (2) ☐ 10 to 12 months after abduction (5)  
☐ 4 to 6 months after abduction (3) ☐ Over 1 year after abduction (6)

341. Did you experience barriers in being able to promptly complete the Hague application?

BARRIERS 341

- ☐ Yes (1) ☐ No (2) (Skip to 347)

342-6. What barriers did you experience? (Check all that apply)

- ☐ Instructions/forms difficult to understand (1)  
☐ Had to get legal documents translated (1)  
☐ Had to get certified court order (1)  
☐ Had to make repeated calls to the State Department (1)  
☐ Other barriers: \_\_\_\_\_ (1)

FORMS 342  
TRANSLAT 343  
CERTIFY 344  
SDCALLS 345  
BARROTR 346

347-9. What country or countries received your Hague application?

HAGONE 347  
HAGTWO 348  
HAGTHR 349

\_\_\_\_\_ (Name of other country or countries)

350. Was your application accepted by the foreign Central Authority?

ACCEPT 350

- ☐ Yes (Skip to 356) (1) ☐ No (2)

351-5. If not accepted, what reason(s) were you given by the Central Authority?

- ☐ Child abducted prior to country adopting Hague Convention (1)  
☐ Application was incomplete (e.g. not translated into foreign language) (1)  
☐ Country or region of country not part of Hague Convention  
(Explain: \_\_\_\_\_) (1)  
☐ Other reason(s): \_\_\_\_\_ (1)  
☐ No reason given (1)

EARLY 351  
INCOMPL 352  
NOTHAG 353  
OTRREJ 354  
NOREAS 355

356. What procedures were used in the other country to determine the country of habitual residence under the Hague?

HAGPROC 356

- ☐ A court hearing before a judge (1)  
☐ A judicial review of the application without a hearing (Skip to 366) (2)  
☐ Other procedure(s): \_\_\_\_\_ (Skip to 366) (3)

357. Did you attend this court hearing?

ATTEND 357

- ☐ Yes (Skip to 366) (1) ☐ No (2)

358-65. Why didn't you attend the hearing? (Check all that apply):

- ☐ Could not afford airfare/cost of staying in country (1)
- ☐ Could not get time off of work (1)
- ☐ Not enough notice to make arrangements (1)
- ☐ Attorney advised you not to attend; no need (1)
- ☐ Fearful of leaving U.S. (1)
- ☐ Fearful of going to other country (1)
- ☐ Difficulty getting passport or visa (1)
- ☐ Other reasons: \_\_\_\_\_ (1)

AIRFARE 358  
TIMEOFF 359  
NOTICE 360  
ADVISNO 361  
FEARLVUS 362  
FEARCOUN 363  
DIFFPASSP 364  
NOTATT 365

366. Did the foreign Central authority offer (or refer you to) low-cost or free legal assistance and representation regarding the Hague proceeding?

FREELEG 366

- ☐ Yes (1)
- ☐ No, not available (2)
- ☐ No, not eligible under income criteria (3)

367-8. Did anyone attend the hearing in your place?

INPLACE 367

- ☐ Yes (1) \_\_\_\_\_> 368. Who? \_\_\_\_\_
- ☐ No (2)

WHOATT 368

369. Were you represented by an attorney at the hearing?

REPATTY 369

- ☐ Yes (1)
- ☐ No (2)

370-7. Who else attended the hearing? (Check all that attended)

- ☐ Your attorney (1)
- ☐ The abductor (1)
- ☐ The abductor's attorney (1)
- ☐ The child or children (1)
- ☐ Members of your family (1)
- ☐ Members of the abductor's family (1)
- ☐ Staff of the foreign Central Authority (1)
- ☐ Anyone else (Specify: \_\_\_\_\_) (1)

LAWATT 370  
ABDATT 371  
ABDLAW 372  
CHLDATT 373  
FAMATT 374  
ABDFMATT 375  
ATTCAST 376  
OTRATT 377

378-85. During the court hearing to determine the country of habitual residence under the Hague, please indicate if the judge allowed testimony on any of the following topics:

- ☐ Allegations of child abuse or neglect (1)
- ☐ Allegations of domestic violence (1)
- ☐ Parenting practices of either or both parents (other than abuse allegations) (1)
- ☐ Arguments of raising child in U.S. vs. other country (1)
- ☐ U.S. culture vs. culture of other country (1)
- ☐ Religious upbringing of child (1)
- ☐ Other testimony relating to the interests of the child (1)
- ☐ Other non-jurisdictional testimony (Specify: \_\_\_\_\_) (1)

ALLEGAB 378  
ALLEGDV 379  
PRACTICE 380  
USVSOTR 381  
CULTURES 382  
RELOFCH 383  
INTEREST 384  
NONJUR 385

386-94. Which of the following individuals submitted testimony for this hearing or procedure?

- ☐ N/A. No testimony given (1)  
☐ You (1)  
☐ The abductor (1)  
☐ The child or children (1)  
☐ Your family and/or friends (1)  
☐ Family and/or friends of the abductor (1)  
☐ Law enforcement officials (Specify: \_\_\_\_\_) (1)  
☐ Other: \_\_\_\_\_ (1)

NOTEST 386 \_\_\_\_\_  
LBPTTEST 387 \_\_\_\_\_  
ABDTEST 389 \_\_\_\_\_  
KIDTEST 390 \_\_\_\_\_  
FFLBTEST 391 \_\_\_\_\_  
FFABTEST 392 \_\_\_\_\_  
LEATEST 393 \_\_\_\_\_  
OTRTEST 394 \_\_\_\_\_

395. Please tell us about anything during the hearing (witnesses, testimony, etc.) which you felt was biased or irrelevant to the hearing's purpose (to determine country of habitual residence).

BIAS 395 \_\_\_\_\_

396. What was the outcome of the Court hearing or procedure? (Check one)

OUTCOME 396 \_\_\_\_\_

- ☐ Court ordered child returned to U.S. (1)  
☐ Court denied petition for return (2)  
☐ Court awarded custody to the abductor (3)  
☐ Other outcome: \_\_\_\_\_ (4)

397. Following the court's decision, did the abductor take steps to prevent the child's return to the U.S.?

PREVRET 397 \_\_\_\_\_

- ☐ Yes (1) ☐ No (Skip to 401) (2)

398-400. Check any actions the abductor took:

- ☐ Filed court documents to block return of child (1)  
☐ Made attempts to flee with child (1)  
☐ Other actions: \_\_\_\_\_ (1)

BLOCKRET 398 \_\_\_\_\_  
FLEE 399 \_\_\_\_\_  
OTRBLK 400 \_\_\_\_\_

**NON-HAGUE QUESTIONS (Only answer these questions if you did not submit a Hague Application)**

401. Did you seek a court order in a foreign court?

FORCO 401 \_\_\_\_\_

- ☐ Yes (1) ☐ No (Skip to 407) (2)

402-406. Were you requesting that the court . . . (Check all that apply)

Did the court . . . (Answer for those you checked)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Grant you custody? (1)               | <input type="checkbox"/> Grant you custody?               | <input type="checkbox"/> Yes (1)<br><input type="checkbox"/> No (2) |
| <input type="checkbox"/> Grant you visitation? (1)            | <input type="checkbox"/> Grant you visitation?            | <input type="checkbox"/> Yes (1)<br><input type="checkbox"/> No (2) |
| <input type="checkbox"/> Enforce your U.S. custody order? (1) | <input type="checkbox"/> Enforce your U.S. custody order? | <input type="checkbox"/> Yes (1)<br><input type="checkbox"/> No (2) |
| <input type="checkbox"/> Order the child's pick-up? (1)       | <input type="checkbox"/> Order the child's pick-up?       | <input type="checkbox"/> Yes (1)<br><input type="checkbox"/> No (2) |
| <input type="checkbox"/> Order the child's return? (1)        | <input type="checkbox"/> Order the child's return?        | <input type="checkbox"/> Yes (1)<br><input type="checkbox"/> No (2) |

GRTCUS 402 \_\_\_\_\_  
GRTVIS 403 \_\_\_\_\_  
ENFCUS 404 \_\_\_\_\_  
ORDPU 405 \_\_\_\_\_  
ORDRET 406 \_\_\_\_\_



**PLEASE ANSWER THE FOLLOWING QUESTIONS REGARDLESS OF WHETHER YOUR CHILD WAS ABDUCTED TO A HAGUE OR NON-HAGUE COUNTRY**

407-34.

**IF YOU CONTACTED THE U.S. STATE DEPARTMENT REGARDING THE INTERNATIONAL ABDUCTION OF YOUR CHILD OR CHILDREN, PLEASE ANSWER THE FOLLOWING:**

What were your initial expectations regarding how the State Department would assist you in locating and recovering your child?  
(Check all that apply).

(1)

- ☐ Assign someone to investigate and search for your child.
- ☐ Referrals to attorneys and investigators in foreign country.
- ☐ Refer you to free or low-cost legal assistance.
- ☐ Have staff which speak the language of the country to which your child was abducted.
- ☐ Be familiar with international abduction issues.
- ☐ Provide publications about international abduction.
- ☐ Offer advice about strategies to use in locating and recovering your child or children.
- ☐ Have knowledge about the Hague Convention and how it applies in foreign countries.
- ☐ Have knowledge about the legal system in the country to which your child was abducted.
- ☐ Cut off U.S. aid to countries which refuse to return abducted children.
- ☐ Provide report on welfare of child.
- ☐ Take direct action to pick up and return child
- ☐ \_\_\_\_\_  
(Other - write in)
- ☐ \_\_\_\_\_  
(Other - write in)

Based on your experience, what would you tell another left-behind parent to expect in State Department assistance?  
(check all that apply).

(1)

- ☐ SCHDID 407 \_\_\_\_ 408 \_\_\_\_ SCHEXP
- ☐ REFDID 409 \_\_\_\_ 410 \_\_\_\_ REFEXP
- ☐ FREDID 411 \_\_\_\_ 412 \_\_\_\_ FREEXP
- ☐ LANGDID 413 \_\_\_\_ 414 \_\_\_\_ LANGEXP
- ☐ FAMDID 415 \_\_\_\_ 416 \_\_\_\_ FAMEXP
- ☐ PUBDID 417 \_\_\_\_ 418 \_\_\_\_ PUBEXP
- ☐ ADVDID 419 \_\_\_\_ 420 \_\_\_\_ ADVEXP
- ☐ HAGDID 421 \_\_\_\_ 422 \_\_\_\_ HAGEXP
- ☐ LEGDID 423 \_\_\_\_ 424 \_\_\_\_ LEGEXP
- ☐ AIDID 425 \_\_\_\_ 426 \_\_\_\_ AIDEXP
- ☐ WELDID 427 \_\_\_\_ 428 \_\_\_\_ WELEXP
- ☐ DIRDID 429 \_\_\_\_ 430 \_\_\_\_ DIREXP
- ☐ OTRIDID 431 \_\_\_\_ 432 \_\_\_\_ OTRIEXP
- ☐ OTIDID 433 \_\_\_\_ 434 \_\_\_\_ OTIEXP

THE FOLLOWING QUESTIONS ASK ABOUT THE RETURN OF YOUR CHILD. IF YOUR CHILD HAS NOT YET BEEN RETURNED, PLEASE ANSWER THE NEXT QUESTION, AND SKIP TO QUESTION 449.

436. Has your child been returned?

RETCHLD 436

- ☐ Yes (1) ☐ No (Skip to 449) (2)

437. How long after the abduction were the children returned?

WHNRET 437

- ☐ Within 1 month of the abduction (1)  
☐ 1 to 3 months after the abduction (2)  
☐ 4 to 6 months after the abduction (3)  
☐ 7 to 12 months after the abduction (4)  
☐ 13 to 24 months after the abduction (5)  
☐ 25 to 36 months after the abduction (6)  
☐ More than 3 years after the abduction (Specify: \_\_\_\_\_) (7)

438. Did you go to pick up your child?

PICKUPCH 438

- ☐ Yes (1) ☐ No (2)

439. Please describe how the children were returned:

HOWRET 439

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440-8. What were the barriers you faced to picking up your child? (Check all that apply)

- ☐ No barriers (1)  
☐ Cost of plane ticket (1)  
☐ Difficult to get time off work (1)  
☐ Fearful of leaving other children (1)  
☐ Had to obtain passport for self and/or child (1)  
☐ Had to obtain visa for self and/or child (1)  
☐ Difficulty traveling in other country (1)  
☐ Difficulty in communicating in other country (1)  
☐ Other barriers: \_\_\_\_\_ (1)

NOBAR 440

PLANE 441

OFFWORK 442

LEAVCH 443

NOPASS 444

NOVISA 445

DIFTRAVL 446

COMMUNIC 447

BARPICK 448

449-76. Who or what organizations provided significant assistance in the search and/or recovery of your child?  
(Check all that apply).

- |   |                    |
|---|--------------------|
| <input type="checkbox"/> Your family (e.g. parents, siblings, other children, new spouse) (1) | FAMILY 449. ____   |
| <input type="checkbox"/> Your friends or neighbors (1)  | NEIGHB 450. ____   |
| <input type="checkbox"/> Family of the abductor (1)   | ABDKIN 451. ____   |
| <input type="checkbox"/> Abductor's friends or neighbors (1)                                  | ABDNEIG 452. ____  |
| <input type="checkbox"/> Non-family members of abductor's ethnic community (1)                | ABDECOM 453. ____  |
| <input type="checkbox"/> Co-workers or supervisor (1)   | COWORK 454. ____   |
| <input type="checkbox"/> Clergy (1)   | CLERGY 455. ____   |
| <input type="checkbox"/> Social service professionals (1)                                     | SOC SVC 456. ____  |
| <input type="checkbox"/> Police/Sheriff (1)   | SHERIFF 457. ____  |
| <input type="checkbox"/> Attorney in U.S. (1)   | LINUS 458. ____    |
| <input type="checkbox"/> Attorney in another country (1)                                      | LINOTR 459. ____   |
| <input type="checkbox"/> U.S. Courts for subpoenas, custody orders (1)                        | CHOUSES 460. ____  |
| <input type="checkbox"/> Prosecutor/District Attorney (1)                                     | ATYDIS 461. ____   |
| <input type="checkbox"/> FBI (1)  | FEDBUR 462. ____   |
| <input type="checkbox"/> Foreign embassy or consulate in U.S. (1)                             | CONFOR 463. ____   |
| <input type="checkbox"/> U.S. embassy or U.S. consulate in another country (1)                | EMBASSY 464. ____  |
| <input type="checkbox"/> U.S. State Department (1)  | DEPSTAT 465. ____  |
| <input type="checkbox"/> Bureau of Vital Statistics (flag birth records) (1)                  | VITALST 466. ____  |
| <input type="checkbox"/> Private investigator (1)   | INVESTIG 467. ____ |
| <input type="checkbox"/> Central authority in another country (1)                             | CENTAUTH 468. ____ |
| <input type="checkbox"/> Courts in another country under the Hague Convention (1)             | HCOURTS 469. ____  |
| <input type="checkbox"/> Courts in a non-Hague country (1)                                    | NHCOURT 470. ____  |
| <input type="checkbox"/> Government offices/officials in a non-Hague country (1)              | NHGOVT 471. ____   |
| <input type="checkbox"/> National Center for Missing and Exploited Children (NCMEC) (1)       | NCMECT 472. ____   |
| <input type="checkbox"/> State missing children's clearinghouses (1) (Specify: _____)         | MCORGS 473. ____   |
| <input type="checkbox"/> Missing children non-profit organizations (1) (Specify: _____)       | SKOOLS 474. ____   |
| <input type="checkbox"/> Schools (flag school records) (1)                                    | ADDITL 475. ____   |
| <input type="checkbox"/> Other source (Specify: _____) (1)                                    | SCTWQ 476. ____    |

477-91.

Did you or do you feel that any of the following cultural beliefs or biases negatively affected the treatment you received in attempting to locate and recover your child? (Check all that apply).

**Beliefs or biases relating to . . .**

**What type of agency or organization expressed these views?**

- |   |       |              |
|---|-------|--------------|
| <input type="checkbox"/> Race or ethnicity  | _____ | RACBIAS 477  |
| <input type="checkbox"/> Unmarried parents  | _____ | UNMARRY 478  |
| <input type="checkbox"/> Searching fathers  | _____ | DADBIAS 479  |
| <input type="checkbox"/> Non-custodial parents  | _____ | NCUSTBIA 480 |
| <input type="checkbox"/> Religion   | _____ | RELBIAS 481  |
| <input type="checkbox"/> American "lifestyle" (e.g., TV, violence)                        | _____ | AMLIFE 482   |
| <input type="checkbox"/> U.S. military & military personnel in foreign countries          | _____ | MILBIAS 483  |
| <input type="checkbox"/> Family violence  | _____ | DVBIAS 484   |
| <input type="checkbox"/> The presumed unfitness of left-behind parents in abductions      | _____ | PRESUM 485   |
| <input type="checkbox"/> Working women  | _____ | WVBIAS 486   |
| <input type="checkbox"/> How searching parents should act in public (e.g., tearful, etc.) | _____ | ACTBIAS 487  |
| <input type="checkbox"/> Educated women   | _____ | EDUBIAS 488  |
| <input type="checkbox"/> Searching parents who have remarried or have other children      | _____ | REMARRY 489  |
| <input type="checkbox"/> That family abduction is simply a domestic issue                 | _____ | DOMBIAS 490  |
| <input type="checkbox"/> Other beliefs or biases  | _____ | OTRBIAS 491  |

Please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOW WE HAVE SOME QUESTIONS ABOUT WHERE YOU FOUND ASSISTANCE AND WHAT OBSTACLES YOU HAVE FACED IN THE SEARCH FOR YOUR CHILD.**

492-9. What kind of help or support did or do you receive in searching for your child? (Check all that apply.)

- |  |             |
|--|-------------|
| <input type="checkbox"/> Financial (e.g. gifts, loans) (1)                       | CASH 492    |
| <input type="checkbox"/> Emotional (1)   | EMSUPP 493  |
| <input type="checkbox"/> Information or advice about international abduction (1) | INFOADV 494 |
| <input type="checkbox"/> Information or advice about legal issues (1)            | LEGADV 495  |
| <input type="checkbox"/> Household and/or child care assistance (1)              | HHCCARE 496 |
| <input type="checkbox"/> Flexible or lightened schedules at work (1)             | WKSCHED 497 |
| <input type="checkbox"/> Help in locating the abductor or your child (1)         | LOCHELP 498 |
| <input type="checkbox"/> Other help or support: _____ (1)                        | OTRHLP 499  |

500-9. Where have you turned for help in coping with the stress of your child being abducted?  
(Check all that apply.)

- |   |              |
|---|--------------|
| <input type="checkbox"/> Informal emotional support from friends and family (1) | INFORMAL 500 |
| <input type="checkbox"/> Books and other reading material (1)                   | BOOKS 501    |
| <input type="checkbox"/> Prescription drugs (1)                                 | PDRUGS 502   |
| <input type="checkbox"/> Over-the-counter drugs (1)                             | OTCDRUGS 503 |
| <input type="checkbox"/> Therapy (1)  | THERAPY 504  |
| <input type="checkbox"/> Counseling (1)   | MHCOUN 505   |
| <input type="checkbox"/> Support groups (1)                                     | SGROUPS 506  |
| <input type="checkbox"/> Religion (1)   | CHURCH 507   |
| <input type="checkbox"/> Other: _____ (1)                                       | SUPPOTR 508  |
| <input type="checkbox"/> N/A. (1)   | N/A 509      |

510-520

How much money have you spent since the abduction in trying to locate and/or recover your child? Estimate amounts spent, if possible.

	<u>Estimate amounts</u>	
Attorney in U.S.	\$ _____	CASHATY 510. ____
Attorney in other country	\$ _____	CASHFOR 511. ____
Court costs (U.S. & other country)	\$ _____	CASHCT 512. ____
Other legal costs	\$ _____	CASHLEG 513. ____
Private investigator	\$ _____	CASHPI 514. ____
Rescuer/Reabductor	\$ _____	CASHRES 515. ____
Travel costs (e.g. plane fares, hotels)	\$ _____	CASHTVL 516. ____
Communication costs (phone calls, telegrams, photocopies, translation)	\$ _____	CASHPHN 517. ____
Therapy or counseling (include cost of physician, prescriptions, etc.)	\$ _____	CASHCOUN 518. ____
Other costs. Describe: _____	\$ _____	OTRCASH 519. ____
Estimated total amount spent since abduction:	\$ _____	TTLCASH 520. ____

521-7. What are the sources of these funds?

<input type="checkbox"/> Own savings and earnings (1)	SAVINGS 521. ____
<input type="checkbox"/> Gift(s) from extended family or friends (1)	GIFTS 522. ____
<input type="checkbox"/> Loan(s) from extended family or friends (1)	FLOANS 523. ____
<input type="checkbox"/> Loan(s) from bank or financial institution (includes mortgages or equity loans) (1)	BKLOANS 524. ____
<input type="checkbox"/> Credit card(s) (1)	CCARDS 525. ____
<input type="checkbox"/> Fund raising event(s) (1)	FUNDR 526. ____
<input type="checkbox"/> Other sources: _____ (1)	OTRSC 527. ____

528-552.

On a scale of 1 to 10 (with 1 being the GREATEST obstacle), please rate the following list of obstacles in terms of the level of difficulty they have caused in your attempts to recover your child. (If an obstacle on this list was not encountered, please write "N/A" beside it. You may also write in and rate any obstacles you encountered that are not on this list.)

<input type="checkbox"/> Lack of sufficient funds	NOTSUFF 528
<input type="checkbox"/> Lack of time	NOTIME 529
<input type="checkbox"/> Laws of other countries	OTRLAWS 530
<input type="checkbox"/> American laws	AMERLAWS 531
<input type="checkbox"/> Lack of uniform definition of abduction	UNIFORM 532
<input type="checkbox"/> Lax attitude of law enforcement agencies	LAXATT 533
<input type="checkbox"/> Difficulties getting law enforcement to enter children onto NCIC computer	NONCIC 534
<input type="checkbox"/> State and/or local law enforcement agencies (Specify obstacles: _____)	LAWENF 535
<input type="checkbox"/> Federal law enforcement (FBI) (Specify obstacles: _____)	FEDLEA 536
<input type="checkbox"/> Prosecutor's office (e.g., unwillingness to extradite, file charges, etc.) (Specify obstacle: _____)	PROOFC 537
<input type="checkbox"/> Difficulties with missing children's organization (Specify organization and obstacle: _____)	MCHORG 538
<input type="checkbox"/> Lack of State Department communication	SDCOMM 539
<input type="checkbox"/> Judge's lack of experience in international abduction cases	JDEXPER 540
<input type="checkbox"/> Judge's lack of knowledge about Hague Convention (in Hague Countries only)	JDHAG 541
<input type="checkbox"/> Difficulty working with government agencies/officials in foreign country (Specify country and obstacles: _____)	FORAGENC 542
<input type="checkbox"/> Ease of exiting the U.S.	EXTEASE 543
<input type="checkbox"/> Child's passport was not flagged to prevent issuing second passport	NOFLAG 544
<input type="checkbox"/> Difficulty getting legal representation	NOREPR 545
<input type="checkbox"/> U.S. Immigration agency (INS) failure to act regarding abductor's immigration status	INS 546
<input type="checkbox"/> Airlines failed to release information	AIRLINE 547
<input type="checkbox"/> Lack of cooperation from foreign embassy or consulate in U.S.	COOPEMBU 548
<input type="checkbox"/> Lack of cooperation from U.S. embassy or consulate in foreign country	COOPEMBF 549

Other obstacles (list and rank order with others):

<input type="checkbox"/> _____	OBSTO 550
<input type="checkbox"/> _____	OBSTT 551
<input type="checkbox"/> _____	OBSTH 552

553-609.

In what ways, if any, were the following individuals and organizations helpful in the search and/or recovery of your child?  
(Please mark "N/A" where help was not sought.)

Ways they were helpful

Prosecutor in U.S. state	_____	STPROS 553
Police or Sheriff in U.S. state	_____	PLSHERF 554
FBI	_____	IBF 555
Interpol	_____	INTERPOL 556
Police in foreign country	_____	FORPOLC 557
Attorney used in U.S.	_____	ATYAMER 558
Attorney used in foreign country	_____	OVERSATY 559
U.S. State Department	_____	DOSTATE 600
Foreign embassy/consulate in U.S.	_____	OVEREMB 601
U.S. embassy/consulate in other country	_____	AMEREMB 602
Missing children's organization(s)	_____	ORGMC 603
<b><u>For Hague countries only:</u></b>		
The foreign Central Authority	_____	CAOVERS 604
The foreign court acting under the Hague Convention	_____	CTOVER 605
<b><u>For Non-Hague countries only:</u></b>		
Foreign court in a non-Hague country	_____	NHCRT 606
Government officials in foreign, non-Hague country	_____	NHOFFIC 607
<b><u>Other Individuals/Organizations:</u></b>		
_____	_____	HLPOTO 608
_____	_____	HLPOTT 609



610. **BASED ON YOUR EXPERIENCE, DO YOU HAVE ANY SUGGESTIONS TO SHARE WHICH YOU THINK COULD MAKE INTERNATIONAL PARENTAL ABDUCTION MORE PREVENTABLE OR RESOLVABLE?**

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611. **WHAT SUGGESTIONS DO YOU HAVE TO MAKE IT EASIER FOR PARENTS TO LOCATE AND RECOVER CHILDREN WHO WERE ABDUCTED BY ANOTHER PARENT TO A FOREIGN COUNTRY?**

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612. **DO YOU HAVE ANY ADDITIONAL INFORMATION OR COMMENTS?**

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**As discussed at the beginning of the survey, all of your answers are confidential and will only be presented anonymously and in a grouped format. However, if needed, we would like to contact you to follow up on any questions or if we need clarification on your answers? If we may contact you, please fill out your name and telephone number here:**

**Name (if you prefer, just write in your first name):** \_\_\_\_\_

**Telephone number:** \_\_\_\_\_ (include area code)

**OPTIONAL QUESTION:**

*If you worked with or were assisted by a lawyer or government official here or in a foreign country who was particularly helpful, please give name and telephone number here:*

**Full name (print):** \_\_\_\_\_

**Title/Office:** \_\_\_\_\_

**Country:** \_\_\_\_\_

**Telephone number:** \_\_\_\_\_

**If you would like to receive a summary of the research findings from this project, please write in your name and mailing address below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**When you have completed the survey, please place it in the enclosed self-addressed, pre-paid white Federal Express envelope and call 1-800-GO-FEDEX (1-800-463-3339) for a free pick-up at your residence or office. There is no charge to you.**

**For questions, please contact:**

Janet Chiancone, Research Associate  
American Bar Association/Center on Children and the Law  
740 15th Street, N.W., 9th Floor  
Washington, D.C. 20005-1009  
(202) 662-1734

**THANK YOU VERY MUCH!**



### **Chapter 3**

## **Survey of Central Authorities of the Hague Convention on the Civil Aspects of International Child Abduction**



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# SURVEY OF CENTRAL AUTHORITIES OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

## Chapter Summary

A survey was conducted of the Central Authorities under the Hague Convention on the Civil Aspects of International Child Abduction. Seventy-six percent of all countries with Central Authorities at the time of the survey responded to it. Highlights of the findings include that:

- Over one-third of the Central Authorities were established within the last five years.
- More than two-thirds of Central Authorities are located in justice departments or ministries.
- About two-thirds of Central Authorities have attorneys on staff.
- Central Authority staffs are small (about 3 persons) and generally spend less than half of their time on Hague cases.
- Caseloads vary greatly across Central Authorities. In 1994, outgoing applications ranged from one to 380 cases with a mean of 45 and median of 13.
- The United States was identified most often by Central Authorities as one of the three most frequently dealt with countries in both incoming and outgoing return and access cases. The United Kingdom was next in all categories except outgoing access cases.
- More than 80% of responding countries will accept Hague applications in English and about half that number will accept applications in French. Only eleven Central Authorities reported accepting applications in English and French, although both are official languages of the Hague Convention.
- Twenty-three Central Authorities reported that their Hague return application form contains all of the elements found in Article 8 of the Hague Convention.
- Seven Central Authorities reported that they do not accept applications by facsimile.
- More than 70% of responding Central Authorities reported that they review incoming return applications within one week and more than 80% review outgoing return applications within one week.

- More than 70% of responding Central Authorities open five or fewer incoming return cases and five or fewer outgoing return cases per month. The number of unresolved cases ranges greatly.
- Five Central Authorities reported that the exact location of the child is unknown in over half of their incoming cases.
- Over two-thirds of responding Central Authorities reported that criminal charges are sometimes helpful in efforts to locate the child, while one-third reported that criminal charges are sometimes helpful to proceeding with the Hague case.
- Four Central Authorities reported that some judges in their country will not order a return if criminal charges are outstanding, with one Central Authority indicating the criminal charges must be dropped before that Central Authority can proceed with the case.
- Central Authorities vary in their rate of rejecting applications. Over a quarter of responding Central Authorities reported rejecting applications in cases in which the time between the abduction or retention and the submission of the return application was too long. Almost one half reject applications when there is no evidence that the child is in the country.
- More than one quarter of the responding countries have other intercountry agreements or laws that may be used in lieu of the Hague Convention. Some report that these have simpler procedures than the Hague or are more advantageous in access cases.
- Eighteen Central Authorities reported trying to secure voluntary returns. About one quarter of these reported no success; almost three-quarters reported success in 25% or fewer cases.
- Ten Central Authorities reported that the Central Authority office will represent the parent in the Hague proceeding and 17 reported referring applicant parents to attorneys.
- Seventeen Central Authorities reported that Hague applicants may be eligible for free legal assistance and representation.
- The majority of Central Authorities (26) reported that the Hague proceeding is a hearing before a judge in their country, whereas three Central Authorities reported that it was an administrative proceeding.
- Five Central Authorities reported that judges generally make decisions in Hague cases within one week of the proceedings, 16 reported that decisions are made within six weeks, and two Central Authorities reported that, after the Hague proceedings, the decisions take a year or more.

- About half of Hague return proceedings result in a decision to return the child. Countries vary greatly, with a range of return orders by country of between 5% and 95% of cases.
- Just under three-quarters of responding Central Authorities take steps to ensure that the abducting parent does not flee subsequent to the order for return. Seven Central Authorities reported that all children that were ordered returned were successfully returned, while one Central Authority reported that in more than a quarter of cases with return orders the child was not returned.
- Central Authorities reported that abducting parents sometimes obstruct the order by fleeing with the child, sending the child into hiding, or filing documents to block the return.
- More than 60% of responding Central Authorities reported that judges may specify the terms or conditions for the return (*i.e.*, undertakings). Most impose these terms in a quarter or fewer cases, although one Central Authority indicated that undertakings were imposed in over three-quarters of the cases in that country.
- Most undertakings relate to the provision of transportation and/or lodging for the abducting parent and the placement of the child in protective custody or foster care pending the custody hearing in the country of habitual residence. The main reasons for issuing undertakings were concerns about child abuse, spouse abuse, and the economic disparity of the parties.

### Central Authorities

Under the Hague Convention on the Civil Aspects of International Child Abduction, each party country is required to establish a central authority. Most of the duties of the Central Authority are enumerated in Article 7 of the Convention, which states:

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 the 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 advisors;
- 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.

Other duties are set forth in Articles 8-12 and 21. See Appendix A for a copy of the Convention.

Although Central Authorities are mentioned in law review articles about the Hague Convention, they have received little focused attention in the literature. The major exception is an article on the Central Authorities by law professor Carol Bruch (1994) based on her interviews of Central Authority personnel in ten countries (eight European countries, Israel and the U.S.) in 1990 and 1992 and her observations of two inter-governmental meetings on the Convention at the Hague in 1989 and 1993. She describes the responsibilities of the Central Authority under the Convention and relates some of the variation that existed among the Central Authorities which she studied.

Variation in the operation of Central Authorities and the implementation of the Hague Convention across countries is an important consideration in examining the effectiveness of the treaty. Whereas the Hague Convention has frequently been heralded as a prompt resolution to these difficult international abduction cases, many experts in the field have become increasingly aware that both promptness and resolution in Hague cases depend a great deal on which Hague countries are involved.

## Research Design

### Objective

The American Bar Association Center on Children and the Law conducted a survey of Central Authorities regarding their experiences handling cases of international parental abduction under the Hague Convention on the Civil Aspects of International Child Abduction. The objective of the survey was to identify the similarities and differences in structure and operation of Central Authorities and to assess the degree to which the Hague Convention is working across countries.

The research design, including questionnaire development, sampling, data collection and analysis, and the limitations of the survey, is described in more depth in Appendix B.

### Survey Design

The questionnaire included items which collected data regarding:

- infrastructure of the central authority (staffing, procedures, government agency affiliations);
- number of cases and countries most often dealt with;
- legal representation of left-behind parents;
- the Hague application process (what services the central authority will perform, directly and indirectly; timing of central authority response);
- rejection of Hague applications;
- Hague hearings/proceedings;
- Hague decisions and court order enforcement;
- undertakings;
- follow-up (e.g., tracking custody case after return).



Taking into account the international nature of the sample, staff made efforts to use simple, clear language and a format which was easy to follow. As English is not the first language of many of the countries in the sample, the questionnaire was also translated into French and Spanish. Respondents were given the option to complete the questionnaire in one of these languages. Answering the survey was voluntary. See Appendix C for a copy of the survey in English.

### Sample and Response Rate

In all, 57 central authorities were contacted to participate in the study, representing all Central Authorities existing at that time. This included central authorities in 44 countries, as well as 10 provincial or territorial central authorities in Canada, and three central authorities in the United Kingdom (England/Wales, Scotland, and Northern Ireland).

A total of 44 central authorities responded to the survey, representing an excellent response rate of 77.1% of all Central Authorities existing at that time. Central authorities of 32 countries, including the Canadian federal central authority, ten provincial or territorial central authorities from Canada, and all three central authorities from the United Kingdom (England/Wales, Scotland, and Northern Ireland) completed and returned the survey. The response rate by country was 73%.

## Survey Findings

For purposes of data analysis, responses for countries which had more than one responding central authority (Canada and the United Kingdom) were summarized into a single response for each country. Therefore, although a total of 44 central authorities returned the questionnaire, the findings described in this report represent the responses of the 32 countries represented in the response. For example, total case numbers for the United Kingdom represent the sum of case numbers for all three of its central authorities (England/Wales, Scotland and Northern Ireland).

Researchers also maintained separate data files of individual central authority responses for both the United Kingdom and Canada.

*In reviewing results, keep in mind that, unless otherwise noted, percentages shown reflect the percentages of responding countries that answered that particular question. This is referred to as "valid percent."*

### Central Authority Characteristics

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction was initially ratified by 24 member countries. Additional respondents include 11 countries which acceded to the Convention by the date of the data collection. A list of central authorities that responded to the survey, as well as the dates that these countries adopted or acceded to the Convention is included as Appendix C. Of the eleven countries which did not respond, three were member countries and eight acceded to the convention.

Countries which adopted or acceded to the Convention prior to 1992 made up 62.5% (21) of the responding sample; those that adopted or acceded to the Convention in 1992 or later made up 37.5% (11) of the responding sample.

Researchers coded responding surveys by region of the world as they were returned, and tracked the response rate by region. European responses made up the majority of the sample:

**Table 1. Region of Responding Central Authorities**

	<b>Valid Percent</b>	<b>Response rate by region</b>
<b>Europe</b>	62.5%	80.0%
<b>The Americas/Caribbean</b>	21.9%	63.6%
<b>Other</b>	15.6%	83.3%

Of those central authorities that responded to the survey, the majority (68.8%) were located in a government agency concerned with justice matters. The table below shows the breakdown:

**Table 2. Primary Purpose of Government Agency  
Within which Your Office is Located**

<b>Government Agency</b>	<b>Valid Percent</b>	<b>Frequency</b>
Justice	68.8%	22
Foreign Relations	15.6%	5
Health/Social Services	9.4%	3
Law Enforcement	-	-
Other	6.3%	2

Central authorities were also asked to identify the system of jurisprudence used in their country. Most responding countries use a system of civil law:

**Table 3. System of Jurisprudence**

Type	Valid Percent	Frequency
Civil Law	74.2%	23
Common Law	16.1%	5
Other	9.7%	3

Other responses include Canada (Quebec uses civil law; all other provinces and territories use common law), Panama ("Family Code"), and Zimbabwe ("Roman Dutch Law").

#### Countries with Multiple Central Authorities

Four countries responded that they have more than one central authority. This included Australia, Canada, Mexico, and the United Kingdom. Two of the responding countries (Australia and Mexico) indicated that Hague return and access applications should be submitted directly to the federal central authority only. Central authorities responding from the United Kingdom responded that the application should go to the specific central authority (England/Wales, Scotland or Northern Ireland). Canada responded that "either is acceptable, however, it is more efficient to submit directly to the provincial or territorial central authority."

When asked how the federal central authority transmits applications to the appropriate central authority within the country, Mexico indicated that applications are sent "by pouch through our state offices." The three remaining respondents answered that they use the mail system, and two also use facsimile transmissions. Canada stated that "[o]ften an advance copy will be faxed right away. This is followed by sending the original via mail."

When asked how having more than one central authority affected the way in which cases are handled, all but one indicated that cases are processed more quickly. Australia stated that "the federal responsibility is to co-ordinate action by state/territory authorities." The United Kingdom central authorities indicated that, as this is how they have always handled their cases there is no basis for comparison.

## Central Authority Staffing

On average, responding central authorities report that they have about 3 staff members working on Hague cases.<sup>1</sup> Half reported between one and two staff members. In addition, all but one central authority reported that these staff members have responsibilities other than working on Hague cases. The average percentage of staff time reported spent on Hague cases is 43.0%. Four central authorities were unable to report an actual percentage of staff time, stating that "it depends on the case." As one respondent reported, "whatever necessary--we give priority to these matters."

Researchers sought to learn about the professional backgrounds of staff members. As the following table shows, nearly three-quarters have staff with backgrounds as lawyers:

**Table 4. Staff Members' Professional Backgrounds**

Type of Background	Valid Percent	Frequency
Lawyers	74.2%	23
Managers/Administrators	25.8%	8
Paralegals	9.7%	3
Sociologists/Social Workers	9.7%	3
Psychologists	3.2%	1
Physicians/Nurses	3.2%	1
Other background	29.0%	9

Note: Respondents could answer more than one item, so totals are > 100%.

Other backgrounds included judges, magistrates, a law technician, as well as "bureaucrats," "paraprofessionals," and those with "international relations" experience. One central authority described the staff as a "mix of lawyers, social workers and police." Another listed "2 judges, 2 translators, [and] 1 typist" as staff members. Two central authorities reported that they receive legal advice from attorneys who work in the department, but are not officially members of the central authority staff.

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<sup>1</sup>For 29 valid cases the mean number of staff members is 3.5; the median number of staff members is 3.

Thirty (93.8%) responding central authorities indicated that, for specific cases, they contact experts and/or organizations in the country who are not on the central authority staff. Local attorneys and local law enforcement are the experts contacted most frequently:

**Table 5. Experts and/or Organizations Contacted for Specific Cases**

<b>Expert/Organization</b>	<b>Valid Percent</b>	<b>Frequency</b>
Local attorneys	63.3%	19
Local law enforcement	63.3%	19
Translators	60.0%	18
Interpol	60.0%	18
Child welfare experts	43.3%	13
International Social Services (ISS)	33.3%	10
Immigration officers	30.0%	9
Missing children's orgs.	20.0%	6
Other experts	33.3%	10

Note: Respondents could answer more than one item, so totals are > 100%.

Other experts listed by central authorities included government branches and offices, such as the foreign office, the national police agency, and the child protection agency. Other responses included "public guardianship authority," "secretary of public education," "department of passport," and "state prosecutor." One central authority listed "embassies."

#### Number of Cases

Researchers asked questions regarding the number of cases handled by central authorities for 1994 and 1995. As discussed earlier, several central authorities could not report on the number of cases as the Hague had only recently come into force in their countries. Others were only able to report on one year (1995). About 20 central authorities did answer these questions, however, and the results show a wide range of variance in caseload numbers:

**Table 6. Caseloads**

	1994			1995		
	Mean	Median*	Range	Mean	Median*	Range
<b>Incoming Hague Return Applications</b>	38.8	11.0	2 - 250	43.3	17.0	2 - 325
<b>Outgoing Hague Return Applications</b>	45.0	13.0	1 - 380	45.8	14.0	1 - 377
<b>Incoming Hague Access Applications</b>	9.0	3.0	0 - 60	6.5	2.0	0 - 41
<b>Outgoing Hague Access Applications</b>	7.5	3.0	0 - 46	5.7	3.0	0 - 27

Note: The median may represent a more realistic value, as numbers were somewhat skewed by very high caseloads in one or two countries.

All central authorities indicated that they will accept Hague return and Hague access applications from central authorities in other countries. Over two-thirds (71.9% or 19 countries) also indicated that they will accept applications from left-behind parents directly. Six central authorities (21.9%) also noted that applications are accepted from others, such as "legal representatives," "other authorized persons and their representatives," "any agent of applicant," "grandparents [with] visiting rights," "other family members who possess parental authority," and "anyone with legal visitation."

### Countries

Respondents were asked to identify the three countries that their central authority deals with most frequently in:

- incoming Hague return cases;
- outgoing Hague return cases;
- incoming Hague access cases; and
- outgoing Hague access cases.

In all, 26 countries were listed. After tabulating the responses, countries listed most frequently among the top three for each category are illustrated below:

**Table 7. Countries Most Frequently Involved**

<b>Incoming Return cases (30 countries responded)</b>	<b>Outgoing Return cases (30 countries responded)</b>	<b>Incoming Hague Access Cases (21 responses)</b>	<b>Outgoing Hague Access Cases (17 responses)</b>
<ol style="list-style-type: none"> <li>1. USA (23)</li> <li>2. United Kingdom(12)</li> <li>3. Germany (10)</li> <li>4. Canada (8)</li> <li>5. France (5)</li> <li>6. Sweden (5)</li> <li>7. Spain (4)</li> <li>8. Australia (3)</li> <li>9. Argentina (2)</li> <li>10. Norway (2)</li> <li>11. Denmark, Republic of Ireland, Israel, Mexico, New Zealand, Portugal, Switzerland, and "Yugoslavia" were listed once each.</li> </ol>	<ol style="list-style-type: none"> <li>1. USA (20)</li> <li>2. United Kingdom (7)</li> <li>3. Australia (4)</li> <li>4. France (4)</li> <li>5. Canada (4)</li> <li>6. Germany (3)</li> <li>7. Greece (3)</li> <li>8. Spain (3)</li> <li>9. Denmark (2)</li> <li>10. Norway (2)</li> <li>11. Austria, Hungary, Republic of Ireland, Israel, Mexico, Netherlands, New Zealand, Portugal, Sweden, Switzerland and "Yugoslavia" were listed once each.</li> </ol>	<ol style="list-style-type: none"> <li>1. USA (9)</li> <li>2. United Kingdom (9)</li> <li>3. Canada (6)</li> <li>4. France (6)</li> <li>5. Germany (4)</li> <li>6. Argentina (3)</li> <li>7. Sweden (3)</li> <li>8. Australia (2)</li> <li>9. Denmark (2)</li> <li>10. Switzerland (2)</li> <li>11. Austria, Republic of Croatia, Republic of Ireland, Italy, Netherlands, Norway, Poland, and Spain were listed once each.</li> </ol>	<ol style="list-style-type: none"> <li>1. USA (13)</li> <li>2. France (6)</li> <li>3. United Kingdom (5)</li> <li>4. Germany (4)</li> <li>5. Australia (4)</li> <li>6. Canada (3)</li> <li>7. Israel (2)</li> <li>8. Argentina, Cyprus, Finland, Greece, Italy, New Zealand and Spain were listed once each.</li> </ol>

Note: Responding central authorities were asked to list the top 3 countries for each category. Some respondents answered up to 5 countries for each category.

The United States, the United Kingdom, and France were listed in the top five for all four categories.

### Hague Access Cases

Not all, but most of the responding central authorities (23 or 84.4%) reported that they had received applications relating to access rights. They indicated that they would assist to organize or secure access/visitation rights in situations in which parents are seeking visitation only (22 or 85.7%); and/or for other family members seeking visitation (9 or 35.7%). Ten central authorities (39.3%) also reported that they attempt to secure access pending resolution of a Hague return case. One central authority reported that "when the application for return is dismissed we [try] to secure the right of access."

Central authorities reported different ways in which they assist parents in access cases:

- file petition for access in court (17 or 61.3%);
- attempt to negotiate with the parent or family member who has the child (12 or 48.4%)
- provide names of attorneys to applicant parent (11 or 41.9%).



Other methods of assisting in access cases included "fil[ing] petition for access with the local administrative authority," "secur[ing] attorney for applicant parent," "provid[ing] information as to the proper procedure to be followed," and "referring to the Center for Social Work."

### The Application

Just over eighty percent (20) of responding countries reported that they will accept Hague applications in English, and 13 (41.9%) accept applications in French. Eleven of these countries (34.3%) accept both. Twenty countries (64.5%) also said they would accept applications in the official language of their country, which in 6 cases was Spanish. Three other countries<sup>2</sup> reported that they accept applications in an additional language.

Four countries (12.5%) indicated that they do *not* accept applications in English or French, but will only accept applications in the official language of their country (for two of these countries, the official language is Spanish).<sup>3</sup>

Twenty-three (76.7%) responding central authorities reported that their Hague return application form contains all of the elements found in Article 8 of the Hague Convention, while 5 countries (16.7%) report that it includes some of the elements in Article 8. An additional 3 countries (6.7%) reported that they have designed their own application. Six of the respondents included a blank copy of their application with their completed questionnaire.

Central authorities were asked what they generally require in the application and answered as follows:

- copy of custody orders (30 or 96.8%);
- address where child believed to be living (28 or 90.3%);
- copy of divorce decree (23 or 74.2%);
- recent photograph of child (22 or 71.0%);
- recent photograph of abducting parent (21 or 67.7%);
- copy of marriage certificate (19 or 64.5%);
- copy of child's birth certificate (18 or 58.1%);
- documents establishing abduction took place one year prior to application (8 or 25.8%);
- typed application (8 or 25.8%);
- arrest warrant (5 or 16.1%);
- income eligibility for legal aid (5 or 16.1%).

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<sup>2</sup>These countries were Hungary, Luxembourg and France.

<sup>3</sup>These countries were Austria, Colombia, Panama, and Poland.

In some cases, respondents marked "if available" next to several of the listed items, such as arrest warrants and recent photographs. One wrote that "[a]ll of these can be useful if available. Lawyers acting for applicant in [country] will assess when evidence is required and will ask for affidavits." A similar response stated that "the central authority requires only the elements which figure in the articles of the Convention, but it is desirable and convenient if the request be accompanied by the checked items." Another response stated that "[t]here are no specific requirements for the application. All available information must be communicated."

Eight respondents (25.8%) also listed other items to be included with the application. They included:

"If necessary, a statement that the applicant parent has custodial rights as defined in the Convention."

"Information regarding the city, companions, and flight."

"In case of a custody given by law, a copy of this law."

"Information establishing applicants' rights of custody, circumstances, surrounding removal or retention, habitual residence, explanation of any delay in applying, proposals in relation to return airfare."

Two central authorities listed "power of attorney," one for the "central authority application for [the country's] legal aid." Another stated that "[w]hen [custody order] data are verified by other data or documents we do not require them naturally. In case of doubt we do."

A little under one half of the respondents reported that legal documents in the application need to be officially authenticated or certified, particularly "if they are to be relied on in court."

Seven central authorities (21.9%) do not accept any Hague applications by facsimile. Of those central authorities who will accept applications by facsimile, all but one report that they will accept faxed Hague applications for incoming cases, and 79.2% (19) will accept faxed Hague applications for outgoing cases. All but a few central authorities reported that faxed applications should be followed by the mailed original in order to present the documents in court.

Upon receipt of a Hague application, the central authority will review the application and determine whether or not to accept the case. The following table shows the time frames for review described by central authorities for different types of applications:

**Table 8. Length of Time For Reviewing Application**

<b><u>Type of Case</u></b>	<b>Immediately (&lt; 1 week)</b>	<b>Within 1 month</b>	<b>Other</b>
Incoming Return Cases	22	8	1
Outgoing Return Cases	24	4	1
Incoming Access cases	19	5	1
Outgoing Access cases	21	3	1

No central authorities answered that it took over one month to respond to any of these cases, although two stated conditions to these time frames:

"If the application includes the required information and documents."

"If we have all the necessary documents, there is no need for additional information, and the documents we have support the case unambiguously."

Central authorities also reported on the actions taken once an application is received:

**Table 9. Action Taken by Central Authority Upon Receipt of Application**

<b>Action taken by Central Authority</b>	<b>Valid Percent</b>	<b>Frequency</b>
Acknowledge receipt of application to country that contacts you on behalf of left-behind parent	83.9%	26
Assign a specific staff member to work on case	58.1%	18
Acknowledge receipt of application to left-behind parent directly	22.6%	7
Take other action	22.6%	7

Four countries reported that they will acknowledge receipt of the application to the left-behind parent directly only in cases where the application was received directly from that parent.

Other action taken includes assigning a lawyer to work on the case and/or take part in court proceedings (3 cases), "certify for legal aid," and "[send] to the Center for Social Work." The federal central authority in Australia stated that its office "forwards the Hague application to the corresponding state central authority."

Most central authorities open five or fewer cases a month:

**Table 10. Average Number of Hague cases opened Monthly**

<b>Type of Case</b>	<b>5 or fewer cases</b>	<b>5 - 10 cases</b>	<b>10-15 cases</b>	<b>More than 15 cases</b>
Incoming Return Cases	21	5	2	1
Outgoing Return Cases	21	4	1	2
Incoming Access Cases	27	1	-	-
Outgoing Access Cases	26	2	-	-

At the time the survey was conducted, central authorities were asked to report on the number of cases they have that are still unresolved. Three countries reported that they have no unresolved incoming Hague return cases, and one country reported having no unresolved outgoing Hague return cases. These numbers do not include countries which have as yet not received any Hague applications. As the table below indicates, on average countries have between 10 and 26 unresolved incoming Hague cases, and between 8 and 22 unresolved outgoing Hague cases.

**Table 11. Number of Unresolved Cases**

	<b>Mean</b>	<b>Median</b>	<b>Range (lowest to highest)</b>
Incoming cases	25.2	10.0	0 - 235
Outgoing cases	46.6	10.0	0 - 811

Central authorities also reported that the child's exact location is unknown in about 24% of their incoming Hague cases. Five central authorities reported that, in general, the child's location is unknown in 50% or more of their incoming cases. One respondent stated that this question "is not possible to answer." Another responded that "in most cases the central authority is advised of the exact location of the child. However, we cannot be totally sure that the advised location is where the child actually is."

Nearly half of the responding central authorities will actively search for the child in cases where his/her location is unknown, and another half will refer the party to other resources to locate the missing child. Specific ways in which central authorities will assist in locating the child include contacting Interpol and/or national or local police (9 central authorities), "register of employees, population register," "solicitor appointed actively searches for child," and "private investigators." One central authority stated that there are no "civil and non-criminal" methods of searching for the child.

#### Hague Case Services

Once a decision has been made to accept a Hague return case, only two central authorities (6.3%) reported that no steps are taken to ensure that the abducting parent does not flee from the country. Other central authorities checked the following steps which central authorities and/or attorneys acting on behalf of the applicant generally will take:

**Table 12. Steps Central Authorities Take**

<b>Steps central authority/parent's attorney will take</b>	<b>Percent of Countries</b>	<b>Number Countries</b>
Alert and/or coordinate with state authority that tracks missing children	44.8%	13
Law enforcement authorities are alerted	41.4%	12
Request that court order child turned over to child welfare agency pending proceedings	41.4%	12
Arrange for a responsible party/state authority to get temporary custody of child	37.9%	11
Request that court issue warning/prohibition regarding leaving country	37.9%	11
Request that court inform immigration/customs officials to prevent removal from country	31.0%	9
Remove child from care of person who has abducted child	27.6%	8
Monitor movement of child in possession of child	24.1%	7
Request that court order abductor and child's passports turned over to court or third party	24.1%	7
Request that court order abducting parent's automobile impounded	6.9%	2
Request that court order plane tickets issued to abducting parent relinquished	6.9%	2

Note: Six central authorities reported that attorneys acting on behalf of the applicant parent must apply to the court to take these steps. Respondents could answer more than one question, so totals > 100%.

One central authority reported that an urgent request from their office can register the parent and child in the missing/wanted person files, but in order to keep them listed a judge must approve. Four central authorities stated that whether or not the above steps are taken "depends on the specific case," and steps are generally taken "in rare cases where abductor has kept child hidden from authorities," or "if there is a risk of a new displacement or danger to the child."

## Central Authority Services

Central authorities were presented with a list of services which could be provided to applicant parents in Hague return cases, either directly or through an intermediary. Communicating directly with the other country's central authority, communicating with private attorneys of parents, and acting as liaison between applicant parent and other country's central authorities were the activities most frequently listed. The following table shows how central authorities responded regarding all of the listed services:

**Table 13. Types of Services Provided**

	Child taken to your country only (incoming cases)	Child taken from your country only (outgoing cases)	Both incoming and outgoing cases
Help to draft a petition for return of child	1	12	8
Have a telephone number for emergencies or crisis assistance	1	-	8
Office open beyond normal business hours	3	-	3
Act as liaison between applicant parent and other country's central authority	2	7	15
Assist applicant in completing application	-	12	10
Represent applicant in court proceedings for return of child	10	-	2
Identify free legal representation for applicants	11	-	5
Communicate with private attorney(s) of parents	4	3	18
Assist in collecting and forwarding application and documents to other country's central authority	2	13	15
Translate documents needed for judicial or administrative procedures	2	5	10
Communicate directly with other country's central authority about case on ongoing basis	3	1	25
Maintain regular contact with parties in ongoing cases	4	5	14
Staff attends Hague hearings	2	-	2
Provide addresses of experts and/or professional organizations	4	-	11
Other services	2	-	2

Note: Three countries did not respond to this question.

Other services include "if necessary, the court appoints an expert," and "we furnish information regarding other institutions in [the country] charged with locating minors and missing persons."

All but three responding central authorities also provide information about their countries' laws that are relevant to a Hague Convention application. For example:

- 23 (79.3%) central authorities provide general information concerning family law in the country;
- 20 (69.0%) provide a list of relevant statutes and/or case law;
- 19 (65.5%) provide information regarding law in the country passed to implement the Hague;
- 16 (55.2%) provide information concerning jurisdictional issues;
- 15 (51.7%) provide information regarding non-Hague remedies available in the country;
- 13 (44.8%) provide an analysis of how specific provisions of the Hague such as "habitual residence" have been interpreted in judicial or administrative proceedings in the country;
- 14 (48.3%) provide information on other international treaties beside the Hague that may be relevant.

In most instances (23), the central authority itself covers the cost of preparation and distribution of this information. In the United States, the National Center for Missing and Exploited Children, a non-profit organization supported by private and public funds, provides information as well as the U.S. Central Authority.

### Criminal Charges

Seven central authorities (20.7%) reported that outstanding criminal charges have no effect upon whether or not they can proceed with a Hague return case. For those who reported there was an effect, the impact of criminal charges varied. Sixteen central authorities (55.2%) reported that criminal charges are sometimes helpful in efforts to locate the child; and eight (27.6%) reported that criminal charges are sometimes helpful to proceeding with the case. Four respondents (13.8%), however, reported that some judges in their country will not order a return if there are outstanding criminal charges, and one indicated that criminal charges must be dropped before they can proceed with the case. Two central authorities report that outstanding criminal charges can "hinder voluntary return."

For more information on criminal charges see Appendix E.



### Rejection of Hague Applications

An average of 4.6 cases per central authority have been rejected since 1994. Six countries answered that they had rejected no applications, while one country reported 20 rejections. Reasons for rejection of an application are outlined in the table below.

**Table 14. Reasons Countries Rejected Applications**

	<b>Valid Percent</b>	<b>Frequency</b>
Child is over 16 years old	54.5%	12
No evidence that child is in country	45.5%	10
Child was not wrongfully removed or retained	31.8%	7
Too long between event (abduction/retention) and Hague return application submitted	27.3%	6
Applicant related to but not parent of abducted child	4.5%	1

Other reasons for a rejection of the Hague return application include the Hague Convention not being in effect in the country at the time of the abduction, the child "not located in country," and child had been settled in the country for long period of time. Central authorities also listed "the event occurred prior to [our country] vigorously enforcing the law," "the left-behind parent had been convicted for battering the child," and "overseas applicant refuses to undertake to pay airfares for return for child and abducting parent (requirement in some cases only)" as reasons for application rejection.

All responding central authorities report that they will contact the central authority of the applying country to inform them of the rejection. A little over one-third (11 cases or 36.7%) will also contact and inform the applicant and/or the applicant's attorney directly. Eighty percent (24) of central authorities report that they will provide a written explanation of the reasons for the rejection to:

- the applying central authority (24 countries);
- the left-behind parent (7 countries);
- the left-behind parent's attorney (7 countries);
- another party (1 country).

Ten of the responding central authorities (40%) also reported that there is a process for appealing the rejection of the application.

When the central authority informs the other party of the application rejection, 15

countries reported that they will suggest alternative methods to the applicant, such as filing for access rights or making referrals to local organizations.

### Non-Hague Remedies

Nine responding central authorities (28.1%) reported that there are intercountry agreements or laws that may be used in lieu of the Hague Convention in cases of international child abduction. Three intercountry agreements were listed, and three countries listed bilateral agreements. They included:

- *European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (Luxembourg 1980).* (Listed by seven countries). Respondents listed the following advantages to using this agreement in lieu of the Hague Convention:

"much more precise in matters of visitation or rights."

"there is an advantage in access cases--the Convention provided for mutual recognition and enforcement of custody orders, including access orders at no cost to applicant."

"Allows recognition of 'chasing orders'; allows recognition of access orders."

"Free of procedures."

"Enables us to obtain the recognition and execution of a foreign judgement."

"This Convention has the advantage that it is not only applicable where a removal or retention of a child is considered wrongful, but covers recognition and enforcement of decisions concerning custody of children in general."

- *Convention of October 11, 1977 between Denmark, Finland, Norway and Sweden on Recognition and Enforcement of Decisions concerning Claims according to Private Law* (Listed by one country, although another country listed "Nordic Conventions.") Advantages included:

"The Convention has the same advantage as the European Convention. The procedure may further be less formal than the procedure according to the Hague Convention."

- *Act No. 498 of December 23, 1970, on Return to Another Scandinavian Country as a Result of Certain Decision on Welfare or Treatment.* (Listed by one country, although another country listed "Nordic Conventions.") Advantages included:

"The procedure may be less formal than the procedure according to the Hague Convention."

Two countries listed bilateral agreements between countries, "which make the decisions concerning custody rights enforceable." One country which listed "Bilateral agreements on recognition of foreign custody orders," stated that there is "no advantage. Overseas applicant has to pay for his or her own attorney in [our country]."

### Voluntary Returns

Eighteen responding central authorities (62.1%) reported that they will try to secure a voluntary return of the child. In most cases, the central authority or the attorney appointed for the applicant parent will contact the abducting parent and pursue out of court proceedings to achieve the return. Specific descriptions included:

"When the application has been accepted, the . . . central authority will: contact the abducting parent by phone (if number is available) and notify the abducting parent by registered mail of the application for the child's return, stating the grounds on which the application is based and its intention to submit for a court order for the return of the child if the application is not complied with voluntarily within a reasonable period of time, where period shall be fixed by the central authority."

"the lawyer of the applicant parent contacts the kidnapping parent to explain the convention and voluntary return."

"we ask the parent to return the child voluntarily, but if it doesn't bring a result we take it to court."

One central authority stated that "the abducting party in [our country] is always given a chance to settle the issue voluntarily." Another central authority answered that voluntary returns are only attempted "in some cases (for example, where the abductor is unlikely to flee if contacted)."

Of the 18 central authorities that attempt to secure a voluntary return, just over one-quarter (7) report that no cases have yet been resolved through a voluntary return. Over two-thirds (16 countries) report that 25% or fewer of their cases have been resolved through a voluntary return. Less than one-fifth (4) of those that try to secure a voluntary return report that between 26 and 50% of their cases have been resolved through a voluntary return.

## Legal Representation

About one-third (11 or 39.4%) of the responding central authorities reported that their country had made a reservation to Article 26 of the Convention so that they would not be "bound to assume [the] costs and expenses of the proceedings [including] those arising from participation of legal counsel or advisors." Four of the responding central authorities did not answer this question, which may mean they did not know if their country made a reservation or they did not understand the question.

According to central authorities, applicant parents may obtain legal representation for the Hague proceeding in one or more of the following ways:

**Table 15. Legal Representation for Applicant Parents**

	<b>Valid Percent</b>	<b>Frequency</b>
Central authority will refer applicant parents to attorneys willing to take Hague cases	53.1%	17
Central authority office will represent the parent	31.3%	10
Other method of representation	28.1%	9

Note: Five central authorities did not answer this question. Respondents were able to answer more than one method of legal representation, so total > 100%.

Other methods of representation included state prosecutors (two central authorities), court staff member or court-appointed attorney (three central authorities), two from attorneys from government social welfare agencies (e.g., "Family Development System" and "Institute of Family Welfare"), and legal aid attorneys (one central authority). One central authority answered that "applicant parents must choose their own legal advisors and they have a fee to pay."

Three central authorities also noted that, if preferred, applicant parents can select their own private attorney for representation.

In cases where the central authority provides referrals to attorneys willing to take Hague cases, respondents indicated the following ways in which attorneys are selected for referral:

- Experienced in handling Hague cases (14 or 82.4%);
- Speak language of left-behind parent (10 or 58.8%);
- Agree to take the case at low or no cost (6 or 35.3%);

Other reasons that attorneys may be selected for referral include "residence of the abducted child," "a lawyer experienced in family law," "geography," "nominated by family law society," "listed on the College of Attorneys list," and "specialized in juvenile proceedings."

Seventeen (53.1%) of responding central authorities also indicated that Hague applicants may be eligible for free legal assistance and representation. Eligibility criteria is divided between having to meet income limit requirements (9 countries); and automatic qualification for free legal assistance as a Hague applicant (8 countries). Other responses included the "material situation of parent; the court decides," and "proof that they qualify for legal aid in their own country." One central authority stated that applicant parents are only eligible for "free legal assistance if they come from a [country] that hasn't taken the reservation [to Article 26]."

#### Hague Hearing/Proceeding

Three central authorities reported that the method for conducting Hague proceedings has not yet been determined in their country. The vast majority of central authorities use judicial court hearings, although there is great diversity in the level or type of court hearing or reviewing the case.

**Table 16. Type of Hague Proceeding**

	<b>Valid Percent</b>	<b>Frequency</b>
Judicial court hearings	89.7%	26
Administrative proceedings (e.g., admin. review by judge)	10.3%	3

**Table 17. Level of Court**

	<b>Valid Percent</b>	<b>Frequency</b>
Federal/national court only	13.8%	4
Provincial/state court only	10.3%	3
Municipal courts only	13.8%	4
District courts only	13.8%	4
Courts of "First Instance"	6.2%	2
Family courts	6.2%	2
Juvenile courts	6.2%	2
Combination of federal, provincial and municipal courts, including appeals court (depends on case)	25%	8
"Social Work Center"	3.1%	1

Note: Central Authorities were asked to indicate the level of court(s) that hear or review Hague return cases in their respective countries. Three specific choices were given (i.e., federal/national courts; municipal courts; and provincial/state courts). The fourth and last choice (other) elicited various responses that reflected local practice. For example, two central authorities (6.2%) reported that "courts of 'first instance'" hear Hague cases. In the U.S., this would be equivalent to a trial court.

In the largest number of cases (13 or 43.3%) central authorities provide notice to the abductor of the Hague return proceedings through the mail system. Other methods of notice include:

- personal delivery (10 countries);
- facsimile (3);
- applicant parent or parent's representative required to notify abducting parent (2).

Nine (28.1%) central authorities noted that it is the court or judge's responsibility to notify the abducting parent.

In countries which utilize a judicial court hearing for the Hague proceeding, the survey asked central authorities to identify those individuals who generally attend the hearing. In nearly all countries, the abductor and his/her attorney generally attend the hearing:

- attorney for abducting parent (24 or 88.9%);
- abducting parent (23 or 85.2%);
- attorney for left-behind parent (20 or 74.1%); and
- left-behind parent (17 or 63.0%).

In ten (37.0%) of the responding countries, the abducted child or children attend the hearing, as do a representative of the responding central authority and a psychologist/sociologist. Fewer than one-third of the responding central authorities reported that the following individuals generally attend their country's Hague hearings:

- friends/family of abducting parent (8 or 29.6%);
- friends/family of left behind parent (6 or 22.2%);
- representative of applicant central authority (5 or 18.5%);
- law enforcement officers (5 or 18.5%); and
- private investigator (2 or 7.4%).

Two central authorities answered that a representative of the child protection board generally attends the hearing, one noting that "the abducted child or children can be heard by the judge/judges before the official hearing." Another central authority stated that the "Advisor of Minors" generally attends. One central authority indicated that "anyone is allowed to attend the hearing, since it is public, except for a strong reason to order [a] private hearing."

All but two of the countries which hold judicial court hearings reported that testimony is accepted for the hearing. The table below indicates who may present this testimony.

**Table 18. Persons Permitted to Testify at the Court Hearing**

	Valid Percent	Frequency
Expert witnesses	70.8%	17
Abducting parent	58.3%	14
Left-behind parent	54.2%	13
Abducted child or children	54.2%	13
Friends/family of left-behind parent	50.0%	12
Friends/family of abducting parent	50.0%	12
Responding central authority	33.3%	8
Applicant central authority	29.2%	7
Law enforcement officers	29.2%	7
Private investigators	20.8%	5

Six central authorities pointed out that testimony generally depends on the case and the judge. Two stated that anyone who "the court finds has information relevant to the case," or "who was a pertinent witness" can generally present testimony. Two central authorities noted that testimony is nearly always given through written affidavit, although one noted that "should a party's attorney wish the testimony of a witness, he/she may ask the court for permission."

#### Consultation with Abducted Child

Central authorities were also asked to report whether there is any specific age above which a child must be consulted by the judge regarding his or her thoughts and opinions about being returned as part of a Hague return proceeding. Eleven of the central authorities responded "yes," although when asked to identify the age only six central authorities did so. One country each listed the ages 7, 10, 11, 12, 13 and 14. Other responses to this question included:

- "The code of minors in our country established that in all judicial or administrative proceeding in which a child is affected, the child must be heard."
- "According to . . . [our country's] . . . Family Code, the judge considers . . . the child's age and maturity."
- "The judge can (not necessarily *must*) consult with the child."



- “From 11 years, depending upon the capacity of the minor. It is not a fixed age.”
- “Girls over 12, boys over 14.”

While no central authority indicated that there is a minimum age below which the child may *not* be interviewed by the court, central authorities did identify the lowest age at which a child's objections to being returned had actually been taken into account in their country. The lowest age listed (by one country) was 5. Three countries listed age 10, while two countries each listed ages 6, 7, 8, 12, and one country listed 13. One central authority responded, "as far as we are aware, there have been no cases where the child has objected to being returned."

Central authorities also reported that the judge may consult with the child indirectly through:

**Table 19. Third Parties Consulted for Child's View**

	Valid Percent	Frequency
Counselor or therapist	56.5%	13
Representative of youth protection authority	43.5%	10
An attorney representing the child	34.8%	8
The child's guardian	30.4%	7

Note: Nine countries did not answer this question.

Other persons with whom the judge may consult regarding the child's opinions include "family court counselor or independent psychologist," "child welfare authority," "a psychologist appointed by the court," and "social workers."

#### Location of Hague Proceedings

The majority (24 or 77.4%) of responding central authorities reported that Hague proceedings in their country take place in the locale where the child is located. Only 4 (12.9%) reported that the proceeding takes place in a central location. Three central authorities (9.7%) reported the proceeding takes place in another location, such as "the venue of the abductor." One central authority reported that, if the child has not been located, the hearing will take place in a central location.

### Judicial Education

A little over half (19) of the responding central authorities also reported that they educate judges in their countries about the Hague Convention's provisions. Educational methods include:

- published materials (13 or 72.2%);
- communication with judges in pending cases (11 or 61.1%);
- training of judges (5 or 27.8%).

Specific published materials provided to judges included "an explanation regarding the objectives of the convention, along with a copy of the convention," and "articles in legal newspapers." One central authority reported that "Senior Counsel experienced in Hague proceedings meet from time to time with the principal family court judge." Another reported that "a seminar is being planned."

### Hague Decisions

Sixteen responding central authorities (59.3%) reported that, in general, judges in Hague proceedings will make a decision regarding the case within the six week period following the proceeding. More than one-quarter of these cases (5 cases) report that the decision is made within a week of the proceeding. Seven central authorities (25.9%), however, reported that it generally takes over six weeks for the decision to be made, with one reporting "one year or more," and another reporting "1.5 years." The remaining 4 central authorities (14.8%) reported that it "varies greatly," depending on each judge and/or each case. Five central authorities did not answer this question.

If the judicial or administrative authority has not yet made a decision within six weeks of the proceeding, 18 central authorities report that they will request a statement about reasons for the delay. One central authority reported that they will request "on order of the requesting central authority." Another reported that they do not request, but "we usually have continuing contact with the lawyer and sometimes the court." All but one of the central authorities that indicated a decision generally takes over six weeks answered that they will request a statement about the reasons for delay.

Nearly all central authorities (26 or 86.9%) indicated that their country will provide for appeals to Hague decisions. In most cases (22) the applicant parent and abducting parent are eligible to appeal the decision (22 and 23, respectively). In about one-third of countries (8) the responding central authority is also eligible to appeal the decision. One country indicated that the applicant central authority is eligible to appeal the decision. Other responses included public attorney or public prosecutor, and "institutions that have guardianship of children (through their lawyers)."

Twenty-eight central authorities identified the court or courts which hear appeals in Hague cases. Specific answers included a Court of Appeals (11 central authorities) and the Supreme Court (3 central authorities). Four central authorities reported that more than one court can hear the appeal (e.g., "The District court and the Supreme Court;" "One of the two High Courts;" "The high court in the first instance. The Court of Appeal hears appeals from the High Court on points of law only;"and "(1) Inner House of Court of Session . . . (2) House of Lords."). Three central authorities reported that it depends on the specific case (e.g., "In a case commenced in the Magistrate's Court, an appeal would lie first to the District Court, and then ultimately to the Supreme Court. In a case commenced in the District Court, an appeal would lie to the Supreme Court."). Other responses included:

"District Court"  
 "Capital Court"  
 "Upper State Court"  
 "Provincial High Court"  
 "Full Family Court"  
 "Court of First Instance"  
 "Appeals Court of Second Instance"

### Case Outcome

Central authorities were asked to report on the outcome of Hague proceedings in their countries since 1994. Those countries which implemented the Hague Convention after 1994 were asked to use figures since implementation. The table below shows the average percentages for each decision. Countries which have not as yet had any Hague proceeding decisions were not included in the numbers.

**Table 20. Hague Proceeding Outcomes**

	Mean	Median	Range (lowest - highest)
Judge ordered child returned to applicant country (n=24)	44.7%	50.0%	5.0% - 95.0%
Judge denied petition for return (child to remain in responding central authority's country) (n=23)	23.2%	15.0%	6.0% - 75.0%
Voluntary return (n=22)	19.4%	19.8%	1.0% - 40.0%
Other decisions (n=16)	26.1%	28.5%	0 - 60.0%

Other decisions included those "withdrawn/settled by parents," "child not located," and pending cases.

Tables showing the percentage of cases with different outcomes, as reported by responding central authorities, follow this page.

**Table 21. Percentage of cases in which judge ordered child returned to applicant country.**

<b>Country<sup>4</sup></b>	<b>Percent of Cases</b>
<b>Luxembourg</b>	<b>95%</b>
<b>Sweden</b>	<b>88%</b>
<b>Netherlands</b>	<b>85%</b>
<b>Mexico</b>	<b>85%</b>
<b>Panama</b>	<b>80%</b>
<b>Austria</b>	<b>70%</b>
<b>Italy</b>	<b>60%</b>
<b>New Zealand</b>	<b>54%</b>
<b>U.S.A.</b>	<b>53%</b>
<b>Canada<sup>5</sup></b>	<b>52%</b>
<b>Spain</b>	<b>50%</b>
<b>France</b>	<b>50%</b>
<b>Greece</b>	<b>50%</b>
<b>United Kingdom<sup>6</sup></b>	<b>47%</b>
<b>Australia</b>	<b>27%</b>
<b>Switzerland</b>	<b>25%</b>
<b>Portugal</b>	<b>25%</b>
<b>Chile</b>	<b>25%</b>
<b>Denmark</b>	<b>21%</b>
<b>Germany</b>	<b>15%</b>
<b>Hungary</b>	<b>14%</b>
<b>Poland</b>	<b>10%</b>
<b>Argentina</b>	<b>7%</b>
<b>Finland</b>	<b>5%</b>

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<sup>4</sup>Colombia, Israel, Mauritius, Macedonia, Monaco, Norway, Slovenia and Zimbabwe did not answer this question.

<sup>5</sup>This percentage is based on an average of the six provincial/territorial central authorities that answered the question on the outcome of Hague cases, after accounting for caseload differences. Percentages ranged from 20-100%.

<sup>6</sup>This percentage is based on an average of three central authorities of the United Kingdom, after accounting for caseload differences. Percentages ranged from 19-50%.

**Table 22. Percentage of cases in which judge denied petition for return (child to remain in responding country)**

<b>Country<sup>7</sup></b>	<b>Percent of Cases</b>
<b>Chile</b>	<b>75%</b>
<b>France</b>	<b>50%</b>
<b>Finland</b>	<b>50%</b>
<b>Argentina</b>	<b>47%</b>
<b>Greece</b>	<b>40%</b>
<b>Italy</b>	<b>35%</b>
<b>Austria</b>	<b>25%</b>
<b>Panama</b>	<b>20%</b>
<b>Poland</b>	<b>20%</b>
<b>Denmark</b>	<b>17%</b>
<b>Netherlands</b>	<b>15%</b>
<b>Mexico</b>	<b>15%</b>
<b>Switzerland</b>	<b>15%</b>
<b>Germany</b>	<b>15%</b>
<b>U.S.A.</b>	<b>14%</b>
<b>Canada<sup>8</sup></b>	<b>14%</b>
<b>Portugal</b>	<b>13%</b>
<b>Sweden</b>	<b>11%</b>
<b>Australia</b>	<b>11%</b>
<b>New Zealand</b>	<b>10%</b>
<b>Spain</b>	<b>10%</b>
<b>Hungary</b>	<b>7%</b>
<b>United Kingdom<sup>9</sup></b>	<b>6%</b>
<b>Luxembourg</b>	<b>0%</b>

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<sup>7</sup>Colombia, Israel, Mauritius, Macedonia, Monaco, Norway, Slovenia and Zimbabwe did not answer this question.

<sup>8</sup>This percentage is based on an average of the six provincial/territorial central authorities that answered the question on outcome of Hague cases, after accounting for caseload differences. Percentages ranged from 0-33%.

<sup>9</sup>This percentage is based on an average of the three central authorities of the United Kingdom, after accounting for caseload differences. The percentages of denied petitions ranged from 5-9%.

**Table 23. Percentage of cases with a voluntary return**

Country <sup>10</sup>	Percent of Cases
Germany	40%
Portugal	37%
Finland	35%
Netherlands	35%
Hungary	35%
Australia	27%
France	25%
Denmark	25%
Switzerland	25%
U.S.A.	18%
Spain	15%
Canada <sup>11</sup>	12%
New Zealand	12%
Greece	10%
Poland	10%
Sweden	10%
United Kingdom <sup>12</sup>	10%
Argentina	9%
Austria	5%
Italy	5%
Mexico	5%
Chile	1%
Luxembourg	0%
Panama	0%

**Table 24. Percentage of cases with other outcome (e.g., application withdrawn, dismissed)**

<sup>10</sup>Colombia, Israel, Mauritius, Macedonia, Monaco, Norway, Slovenia and Zimbabwe did not answer this question.

<sup>11</sup>This percentage is based on an average of the six provincial/territorial central authorities that answered the question on outcome of Hague cases, after accounting for caseload differences. Percentages ranged from 0-80%.

<sup>12</sup>This percentage is based on an average of the three central authorities of the United Kingdom, after accounting for caseload differences. Percentages ranged from 8-34%.

Country <sup>13</sup>	Percent of Cases
Poland	60%
Germany	50%
Hungary	44%
Denmark	37%
Australia	35%
Switzerland	35%
United Kingdom <sup>14</sup>	35%
Netherlands	32%
Spain	25%
New Zealand	24%
U.S.A.	15%
Finland	10%
Portugal	8%
Canada <sup>15</sup>	2%
Chile	2%
France	0%
Greece	0%
Sweden	0%
Italy	0%
Austria	0%
Mexico	0%
Panama	0%
Luxembourg	0%

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<sup>13</sup>Colombia, Israel, Mauritius, Macedonia, Monaco, Norway, Slovenia and Zimbabwe did not answer this question.

<sup>14</sup>This percentage is based on an average of the three central authorities of the United Kingdom, after accounting for caseload differences.

<sup>15</sup>This percentage is based on an average of the six provincial/territorial central authorities that answered the question on outcome of Hague cases, after accounting for caseload differences. Only one province listed a percentage.

## Hague Court Order Enforcement

An order of return does not guarantee, however, that the child will be returned. In some cases, further legal action brought by the abducting parent might serve to stay the return. For example, in Mexico frequently return orders are temporarily stayed by the abducting parent filing an *amparo*, which is similar to a writ of habeas corpus. In other cases, the child may not be returned pending an appeal. Finally, the abducting parent may violate the return order by fleeing with the child or sequestering the child to prevent the return.

Seven central authorities reported that the abducting parent had never failed to deliver the child in cases where the judge ordered the return of the child to the other country. One country reported that a failure to deliver the child had occurred in 28% of their cases. Among all other responding countries, the abductor failed to return the child in about 7% of cases. Steps that the abducting parents took to prevent the child from being returned include:

- fleeing with the child or making attempts to flee (19);
- sending child into hiding with others (14); and
- filing documents to block the return of the child (13).

Nineteen (73.1%) of responding central authorities report that judges will take steps to ensure that the abducting parent does not flee from the country subsequent to the order for the return. Central authorities reported that judges have done the following to enforce a return decision in their country:

- 22 reported judges have ordered law enforcement officials or social services to retrieve child;
- 9 reported judges have warned abducting parent he/she would face imprisonment if child was not returned within time required;
- 1 reported judges have imprisoned the abducting parent;
- 6 reported judges have warned abducting parent that a monetary fine would be imposed if child was not returned within time required by judge; and
- 5 reported judges have imposed a fine on abducting parent when child was not returned within time required by judge.

Four central authorities reported other methods of enforcement, including

- "ordered that left-behind parent collect and return child,"



- "the central authority applied to the Court for the issue of a warrant to uplift (recover) the child," and
- "warning [the abducting parent] that if they do not return the child, they will be committing a crime of disobedience against the judge."

### Undertakings

Seventeen of responding central authorities (60.7%) reported that, when ordering a return under the Hague, judges in their country may specify the terms or conditions for the return of the child. The largest group of respondents (10) indicate that judges impose these terms or conditions in 1 to 25% of their cases. One respondent (7.1%) indicated that it occurs in between 76 and 100% of Hague cases in their country.

The terms or conditions fall into two categories: those requiring specified behavior in the country to which the child was taken or retained, and those purporting to govern behavior in the country of habitual residence once the child is returned. The latter have come to be known as "undertakings." Undertakings often take the form of stipulation or consent orders and are ordered in connection with Hague return orders.

Terms and conditions generally imposed include:

- having the applicant parent provide transportation/lodging for abducting parent upon return of child (9);
- upon return, placing the child in protective custody/foster care until the custody hearing (8);
- psychiatric evaluation (5);
- upon return, allowing supervised visitation until the custody hearing (3).

One respondent reported that "Judges . . . can take into account undertakings given by parties to the action in assisting him in reaching a decision whether or not to order the return of a child. They cannot seek to impose conditions. Undertakings accepted in [the] court are enforceable in [our country]. Undertakings offered to courts have involved:

- supervised access to child;
- provision of lodgings for returning family;
- applicant to vacate home;
- provision of income for returning family; and

- immediate raising of custody action in country of habitual residence."

Other undertakings reported by central authorities included:

"Authorities in country of habitual residence alerted and asked to protect welfare of child on return;" and

". . . order specifying date by which child must be returned; failing which the other parent may come and take child back."

When asked under what circumstances judges will generally impose these terms and conditions, only ten of the responding central authorities provided a reason. Those who responded listed cases in which child abuse is suspected as the primary reason (8 or 80.0%). Over half (6 or 60.0%) each also listed cases in which spouse abuse is suspected and cases of economic disparity between the parties. Other reasons reported included "one parent may not be able to raise custody action in the jurisdiction of habitual residence, or may not get legal aid;" and "fear that the child would not be returned otherwise."

While undertakings may facilitate the child's return, there is serious question as to their enforceability in the child's country of habitual residence. Although there is no legal basis to require a court in the country of habitual residence to enforce compliance with an order for undertakings made by the court that orders the child's return, undertakings may be enforced as a matter of comity. At a minimum, they may have some persuasive effect on the courts in the child's habitual residence.

For more information regarding undertakings see Appendix F.

Only six responding central authorities (18.8%) report that courts in their country have taken account of protective (safe harbor) orders issued by courts in the country to which the child is to be returned. Descriptions on how this is done include:

"In some cases the courts require the left-behind parent to apply to an overseas court by giving an undertaking to pay child support/provide accommodation."

"The court take[s] into account freely all the elements of the decision of the foreign court but it can issue differently."

"They are aware of safe harbour orders."

"Foreign decisions are recognized; they influence the content of the decision."

Twelve countries (37.5%) reported that courts do not take into account safe harbour orders. Fourteen respondents did not answer, indicating that some may not have understood the question or not had cases that involved this issue.

## Follow-Up

Twenty-three (about 85%) of central authorities report that they monitor the progress of active outgoing Hague return cases. Only one of these central authorities (3.7%) does so through an intermediary. Twenty four (82.8%) of responding central authorities indicated that records are kept on the outcome of Hague return cases which involve their countries.

In cases where the Hague proceeding in another country has resulted in the child being returned to the responding central authority's country, ways in which these cases are tracked included:

**Table 25. Tracking Methods Upon Order of Return (to Responding Country)**

	<b>Valid Percent</b>	<b>Frequency</b>
Telephone contact with central authority of other country	30.8%	4
Telephone contact with parent in other country	15.4%	2
Request copy of custody orders issued	69.2%	9

Specific descriptions on how this is done included "we can follow through our social services the future developments of custody," and "through the specific [attorney] appointed by the family judge." One central authority reports that they will "send the decision to the other central authority if it is requested." Another reports that they will "help the organization of right of access of the [abducting] parent." A little more than half (17) report that they do not track the custody hearing.

For cases in which the Hague proceeding in the country of the responding central authority resulted in the child being ordered returned to the applicant country, methods of tracking these cases include:

**Table 26. Tracking Methods Upon Order of Return (To Applicant Country)**

	<b>Valid Percent</b>	<b>Frequency</b>
Telephone contact with central authority of other country*	57.1%	8
Telephone contact with parent and/or attorney in other country	14.3%	2
Request copy of custody orders issued	50.0%	7

\*One country reported that they do this only "in rare cases where concern exists about the welfare of children on return."

One central authority reported that they "try to obtain, anyhow, updated information about the conditions of the returned children; the cooperation of the homologous central authority is not always implemented." Over half of the responding central authorities (19) reported that they do not track the custody hearing.

### Records

About three-quarters of central authorities (24) reported that they maintain records on the outcome of Hague return cases which involve their country. One country which indicated that they do not maintain records noted, "but there is always a copy of the court record in our dossier." Another country stated that they maintain "outcome of Hague hearing--not later proceedings."

## Discussion

### Wide Variations In Outcomes Across Hague Countries

The findings from this study clearly demonstrate that the implementation and operation of the Hague Convention on the Civil Aspects of International Child Abduction varies greatly across countries. It is understandable that there would be some variation, because the Central Authorities were established within each country's existing bureaucracy and the Hague proceedings occur within each country's existing judicial system. However, the wide range in the distribution of case outcomes is perhaps the most troubling finding of this study as it reflects a lack of uniformity in the application of the Hague Convention beyond these structural explanations.<sup>16</sup>

The average across countries in outcomes granting the petition to return the child is less than half. This means that a left-behind parent, on average, has less than a 50-50 chance of the court in a Hague country ordering the return of the child. A country that reports high rates of voluntary returns with a low rate of court orders for return is not as problematic as a country with high rates of denial of return petitions and low rates of orders for return. So the return order rate should not be examined in isolation.

Five countries exceed a third of the cases resolved by voluntary returns, eight are between 12-27%, and eleven are 10% or less. The Convention encourages voluntary return, although care always needs to be taken to limit flight risk.

When one examines the variations across countries, the rate of return orders being issued by the court varies from an average of 5% to an average of 95%; the rate of denials of return petitions varies from 6-75%. Each case is different and needs to be heard on its own merits, but it stretches credulity to think that the courts in these countries are applying the Hague Convention somewhat uniformly with such wide differences in the percentages of return orders and denials of return petitions issued.

Also, a return order does not guarantee the physical return of the child. If the return order is not combined with proper procedures for ensuring compliance with the order (e.g. preventing the abducting parent from fleeing with the child), the order is an empty attempt at applying the Convention. One Central Authority reported that in 28% of cases for which there was an order for return, the abducting parent failed to deliver the child.

Probably most curious is the range across countries of cases resulting in an "other" outcome. This question was meant to capture the percentage of cases with an outcome other than a return order, a denial of the return petition, or a voluntary return. The examples we provided in the survey were if the application were withdrawn by the parent or rejected by the Central

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<sup>16</sup>A thorough study of the case law, particularly regarding the 13(b) "grave risk" defense is warranted. Much of the variation may be due to differences in judicial interpretation.

Authority prior to judicial action. Eight countries reported that none of their cases had an “other” outcome, with an additional four reporting under ten percent. Eight countries reported over 30% of the Hague cases having an other outcome, with Poland and Germany at 60% and 50%, respectively. Especially in these countries, it would be important to know what the “other” outcomes were and why only a minority of cases ever reaches the court.

#### No Single Variable Correlates with Rates of Return Orders

We wondered what variables might make the difference in rates of return orders being issued by the court. The values for percentage of return orders were classified by quarters (1-25% and so on) and by fifths (1-20% and so on), and the data were entered for these variables. We then ran crosstab/chi square/ correlation analyses to determine whether a relationship exists between the rate of return (both quarter- and fifth-classified) and the following variables:

- Whether or not judges in the country ever apply conditions to the return of the child;
- Whether or not criminal charges are sometimes helpful in efforts to locate child;
- Whether or not criminal charges are sometimes helpful to proceeding with the case;
- Whether or not criminal charges are helpful either to locating child and/or proceeding with the case;
- Whether or not criminal charges must be dropped before the central authority will proceed;
- Whether some judges will not order a return if there are outstanding criminal charges;
- The type of legal representation offered to left-behind parents (office represents, referred to lawyers, other method);
- The region of the world in which the country is located (Europe, Americas, Other);
- The primary purpose of the government agency in which the central authority is located (foreign relations, justice, other);
- The system of jurisprudence used in the country (civil law, common law, other);
- Type of procedure used in country for Hague cases (court hearing, administrative review);
- Where in the country Hague proceeding takes place (central location, location where child is located, other); and

- Length of time it takes for judges to decide a Hague case (immediately, within 1 week, within 1 month, 1 mo to 6 weeks, over 6 weeks, other).

**No significant relationships were found between these variables and order for return rates.**

We did not conduct a multivariate analysis with the small sample. So, it is possible that some combination of variables makes a difference, but no single one appears to correlate with the rates of orders of return.

### Judicial Practices

Five Central Authorities reported that judges generally made decisions in Hague cases within one week of the proceedings, sixteen reported that decisions were made within six weeks, and seven reported that it took longer than six weeks. Two of the seven reported that judges generally took a year or more to issue a decision after a Hague proceeding! These time frames do not include the time it took for the application to be processed by the Central Authority and for the case to be scheduled on the court docket. Considering a child's sense of time and the purpose of the treaty to facilitate a prompt return to the country of habitual residence, courts in all Hague countries should attempt to achieve the benchmark set by the five that issue decisions within one week of the proceedings.

The issue of consulting with the child in a Hague return proceeding also raises questions. Eleven central authorities reported that judges must consult with children over a certain age. The purpose of the meeting with the child is unclear. The reliability of a child's testimony or in chambers conversation is questionable when the child has been under the influence of the abducting parent, even when the child is not actively coached. A child might also experience guilt or trauma by having to speak for or against a parent. For that reason, even in child custody cases children should not be forced to choose between their parents. A Hague case is not about which parent or country the child chooses, but rather which country, by international law, should be making the custody decisions. Few judges know how to properly question a child or interpret the child's response within the psychological context of the abduction and the child's developmental stage. Therefore, the interview with the child does not appear to be a good method of determining whether "grave risk" exists. At most, such an interview might be used to assess whether undertakings are needed when abuse allegations are raised.

The majority of Hague countries (24) responding to the survey held Hague cases in the locale in which the child was located. Since many abducting parents are returning to their home communities, the possibility of local bias exists. The local judiciary is also not likely to have had experience in Hague cases, which makes them more likely to treat it as a contested custody case. Only 4 countries reported holding the hearing in a centralized location. A centralized location generally means that the judiciary has more experience in Hague cases and is more likely not to treat it as a custody case.

## Variations Among Central Authorities in Procedure

Several topics show variation that raises possible concerns about the appropriateness or efficacy of actions taken by a minority of Central Authorities. French and English are both official languages of the Hague Convention and Central Authorities, under Article 24, are supposed to accept applications and other documents in either language, although “a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application communication or other document sent to its Central Authority.” We found that twenty countries accept applications in English and thirteen in French. (We do not know how many of these countries actually made a reservation.) Four countries indicated that they would not accept applications in English or French, although this is expressly prohibited under Article 24.

Although the Hague Convention specifically permits the acceptance of documents without authentication, just under one half of the responding Central Authorities reported that they require legal documents to be officially authenticated or certified. Over twenty percent did not accept applications by facsimile, whereas most accepted faxed applications, but expected that they would be followed by mailed originals. Certainly if the technology is available, faxed applications should be acceptable at least initially, so as not to delay processing the application.

The responses to the question regarding reasons for the Central Authority to reject applications provide a glimpse into another possible problem. The most frequent reason given for rejecting an application was that the child was over 16 years old. This is an appropriate reason for a Central Authority to reject the application.

Ten Central Authorities rejected applications when there was no evidence that the child was in the country. The Convention does not specifically address what to do if the child has not been located. Under article 12, the Convention states that “(w)here the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.” One would hope that in cases where the child has not yet been located in the country the proceeding would be stayed pending the child’s location. In that way, if the child is later found, the application could be acted on immediately. If there is a delay in locating the child followed by delays in processing an application that had been rejected, it may exceed the year period, making return discretionary if the child is settled in the new environment. If the child is located in another country perhaps the application could be forwarded to that country, so as not to create delays under those circumstances.

Seven Central Authorities reported that they rejected Hague return applications if the child was not wrongfully removed or retained. One wonders why the court is not making these determinations. The court would deny the petition to return the child to the country of habitual residence if it determines that the child was not wrongfully removed or retained. That is quite different than having the Central Authority staff reject the application on that basis. One caveat: under article 15, the Central Authorities “shall so far as practicable assist applicant to obtain ... a decision or determination” that the removal or retention was wrongful from a court in the country



of habitual residence. If a Central Authority assisted in such a way, but the applicant received a determination that the removal or retention was not wrongful, then the Central Authority could appropriately reject the application as there would be no basis for going forward.

Six Central Authorities rejected applications if they determined that it had been too long between the abduction or retention and the submission of the Hague application. Again, is this an appropriate decision to be made by the Central Authority staff? The court has the discretion to return the child if the Hague proceedings commenced a year or more after the date of the abduction or retention. The abducting parent must prove to the court that the child is settled in the new environment for the return petition to be denied. This means that substantial evidence on the child's significant connections to the new environment need to be presented to the court within the framework of that country's civil procedures and rules of evidence. The review of Hague applications by Central Authority staff is not a substitute for the judicial process.

On the other hand, article 27 states that: "When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application." The term "not well founded" allows for a great deal of discretion on the part of Central Authorities. Those few Central Authorities that have attorneys on staff who represent the applicant parents in Hague proceedings perhaps should have a different threshold than the Central Authorities that have attorneys on staff who do not represent clients or those who do not have attorneys on staff at all.

The danger exists that staff members, especially those without legal expertise, will consider cases not well founded based on criteria that may have little or no bearing on the elements relevant to a Hague case or may use a different level of standard in assessing the case than the judicial authorities might. One Central Authority reported that they rejected a case because the applicant parent had been convicted of abusing the child. Again, it seems that it would have been more appropriate for the case to have gone before the court and for the abducting parent to have raised the Article 13(b) "grave risk of harm" defense, presenting the conviction as evidence as part of the case for the defense. The court then would decide, after hearing the evidence, whether to deny the petition for return or to grant it enabling the court in the country of habitual residence to properly determine what was in the best interests of the child, taking into consideration evidence of past abuse.

#### "The Mice and the Elephants"<sup>17</sup>

The great majority of Central Authorities open an average of five or fewer cases of each type (incoming/outgoing; return/access) per month. Only three countries average more than ten new cases per month in both the incoming and outgoing return categories. These three countries are the United States, United Kingdom, and France. When all Central Authorities were asked to list the top three countries to which they send return cases and from which they receive return

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<sup>17</sup>No disrespect is intended by the choice of metaphor. It is meant simply to depict the great differences in the number of children taken to or from various Hague countries.

cases, the United States was most frequently listed. The United Kingdom was listed about half as often for the incoming return cases and about one third as often for the outgoing return cases. The next most frequent countries mentioned among the top three for numbers of incoming or outgoing return cases were Germany, Canada, Australia, and France.

Clearly, the United States represents the largest “elephant” in terms of Hague caseload, followed by the United Kingdom. Although the U.S. represents only one of the 42 Hague countries that responded to the survey, the caseload of children taken from or to the United States is a significant portion of the combined caseloads of all of these countries. Therefore, the performance of American attorneys and judges in incoming Hague cases and the performance of the U.S. Central Authority in processing applications and monitoring the progress of both incoming and outgoing cases are critical to the overall success of the Hague Convention worldwide.

An earlier study found that in a nationwide survey of American judges and attorneys, 60% of judges reported that counsel before them rarely or never adequately informed them about the applicable provisions of the Hague. Almost 70% of attorneys reported that opposing counsel was not familiar with the Hague and over 60% of attorneys reported that judges they appeared before in Hague cases were not familiar with the Hague (Girdner 1994). Another survey of left-behind parents found that over three quarters of the parents had attorneys with no previous experience in international abduction cases (Hatcher and Brooks 1994).

#### Recent Changes in the U.S.

Three major changes occurred in recent years that potentially impact on the performance of the United States in incoming Hague cases. Due to the nature or timing of the changes, none are reflected in the findings of the central authority survey. However, we have had numerous discussions about these changes with experts in the field,<sup>18</sup> including the U.S. Central Authority.

First, after the dismal findings from the Obstacles Research project reflecting the lack of knowledge of American judges and attorneys regarding the Hague Convention, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention funded projects to train judges and attorneys about the Hague Convention and to develop materials relating to it.<sup>19</sup>

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<sup>18</sup>Also see Chapter 4.

<sup>19</sup>The American Bar Association Center on Children and the Law, under the direction of Patricia Hoff convened the North American Symposium on International Child Abduction in 1993, and, under the direction of Linda Girdner, carried out other trainings in conjunction with the Second World Congress on Family Law and the Rights of Children and Youth, the Association of Family and Conciliation Courts, the American Bar Association Section on Family Law, and various state judicial or legal education conferences from 1993 - 1997. A curriculum on the Hague (Hoff 1997a) has been distributed to all state judicial educators and a benchbook (Hoff, Volenik, and Girdner 1997) on child custody jurisdiction, including the Hague

The project directors found that many attorneys and judges who attended trainings on the Hague Convention were already somewhat knowledgeable and experienced. A few were already experts in the area. As a result of these efforts, there is a small cadre of highly knowledgeable attorneys and judges in the U.S. and an enormous number with little or no knowledge. Those with little or no knowledge are generally not motivated to take a training in a subject that they doubt they will ever handle.

The Hague proceeding is held in the jurisdiction (at the federal or state level) in which the child is located. The U.S. is a vast country and children are often abducted to the community that was the former home of the abducting parent. Therefore, the attorneys representing the parents are not likely to have knowledge and experience in the Hague. They may link with an attorney who does have such expertise, but is not licensed in that state.<sup>20</sup> Either way they are likely to appear before a judge who has had no previous Hague experience (and may proceed to consider the best interests of the child.) Under these circumstances, it is not likely that piecemeal training efforts will make a significant difference in raising the level of knowledge of attorneys and judges in all of the communities where representation may be needed at some point.

The second change was the transfer of the case management responsibilities of incoming Hague cases under the Central Authority from the U.S. Department of State, Office of Children's Issues to the National Center for Missing and Exploited Children (NCMEC). Beginning in September 1995, this arrangement has continued under a cooperative agreement that is negotiated annually between the State Department, NCMEC, and the U.S. Department of Justice, Office of Justice Programs.

The anecdotal evidence thus far is that this change has been perceived positively by the organizations involved in the cooperative agreement, other Central Authorities, and other organizations that focus on missing children. The New York State Missing and Exploited Children Clearinghouse credits this change for increasing their ability to locate missing children in international cases more quickly and more often.<sup>21</sup>

The third change was the establishment of an aggressive program for recruiting American attorneys to take incoming Hague cases on a pro bono basis. The International Child Abduction Attorney Network (ICAAN) was another initiative funded by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention and spearheaded by the American Bar

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Convention, has been published by the National Council of Juvenile and Family Court Judges and distributed to their membership. The Hague Curriculum and a set of Hague Issue Briefs (Hoff 1997b) can also be found on the website of the ABA Center on Children and the Law at <http://www.abanet.org/child>.

<sup>20</sup>See Chapter 4, p. 36 for how an attorney may be admitted *pro hoc vice*.

<sup>21</sup>See Chapter 4, pp. 17-18.

Association Center on Children and the Law (ABA).<sup>22</sup> The ICAAN project began in December 1995 and the responsibilities were transferred from the ABA to NCMEC's International Division in September 1997. NCMEC continues to maintain the ICAAN database and recruits new attorneys on an ongoing basis. Experienced ICAAN attorneys also serve as mentors for less experienced volunteers.

The United States had made a reservation to Article 26 of the Convention, exempting it from providing free legal representation in Hague cases. However, under Article 25, Hague applicants are entitled to the same legal aid services as if they were nationals of the country to which the child was abducted.<sup>23</sup> The costs of legal representation in the U.S. is very high and is out of reach of many Hague applicants.<sup>24</sup> Furthermore, other countries, such as the United Kingdom, Canada, and Germany provide legal representation to Hague applicants that often benefits left-behind parents in the U.S. Therefore, the spirit of reciprocity necessitated that additional efforts be made to find affordable representation for Hague applicants whose children were abducted to or retained in the U.S. Some of the challenges of recruiting attorneys to take pro bono Hague cases are provided in Appendix G.

### Conclusion

In conclusion, the broad ranges in outcomes across Hague countries and the variations in Central Authority procedures for accepting cases reflects a problematic lack of uniformity in the application of the Hague Convention. This has the potential of eroding the spirit of reciprocity upon which the treaty is based and raises serious concerns about the Hague Convention's efficacy as a multinational treaty.

Because far more children are abducted to and from the U.S. than any other country, it is critically important that the Hague Convention work in an expeditious and proper manner in incoming and outgoing cases involving the United States. Although recent changes appear to be positive, some of them are piecemeal and insufficient as long term strategies for improvement.

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<sup>22</sup>Dr. Linda Girdner, co-author of the current study, directed ICAAN during the project's first two years, and is, therefore, quite familiar with the challenges and opportunities it presented.

<sup>23</sup>There is no right to legal aid in the U.S., even if one is income-eligible. Each Legal Services Corporation Office determines its own priorities. Many poor people are left without representation in contested divorce and custody matters.

<sup>24</sup>In fact, many Americans who are above the poverty line still cannot afford legal representation in child custody and custody enforcement cases. Lack of affordable legal representation has been identified as a contributing factor to abductions and as a major obstacle to recovery of an abducted child (Girdner and Hoff, 1994, Johnston and Girdner, 1998).

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## Appendix A

## CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention.

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody.

Desiring 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, as well as to secure protection for rights of access.

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -

## CHAPTER I - SCOPE OF THE CONVENTION

## Article 1

The objects of the present Convention are -

- a* to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b* to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

## Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

## 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 retention; and

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

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

## Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

## Article 5

For the purposes of this Convention -

- a* 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b* 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

## CHAPTER II - CENTRAL AUTHORITIES

## Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

## Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through 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.

## CHAPTER III - RETURN OF CHILDREN

*Article 8*

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

*a* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

*b* where available, the date of birth of the child;

*c* the grounds on which the applicant's claim for return of the child is based;

*d* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

*e* an authenticated copy of any relevant decision or agreement;

*f* a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

*g* any other relevant document

*Article 9*

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

*Article 10*

The Central Authority of the State where the child is shall

take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

*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. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

*Article 12*

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of

the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

*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 -

*a* the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

*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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

*Article 14*

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

*Article 15*

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

*Article 16*

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

*Article 17*

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

*Article 18*

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

*Article 19*

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

*Article 20*

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

## CHAPTER IV — RIGHTS OF ACCESS

*Article 21*

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

## CHAPTER V — GENERAL PROVISIONS

*Article 22*

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

*Article 23*

No legalization or similar formality may be required in the context of this Convention.

*Article 24*

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

*Article 25*

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

*Article 26*

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

*Article 27*

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

*Article 28*

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.



*Article 29*

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

*Article 30*

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

*Article 31*

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

*a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

*b* any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

*Article 32*

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 33*

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

*Article 34*

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

*Article 35*

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States. Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

*Article 36*

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

## CHAPTER VI - FINAL CLAUSES

*Article 37*

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 38*

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

*Article 39*

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

*Article 40*

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

*Article 41*

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

*Article 42*

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 43*

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force —

- 1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- 2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

*Article 44*

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

*Article 45*

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following —

- 1 the signatures and ratifications, acceptances and approvals referred to in Article 37;
- 2 the accessions referred to in Article 38;
- 3 the date on which the Convention enters into force in accordance with Article 43;

4 the extensions referred to in Article 39;

5 the declarations referred to in Articles 38 and 40;

6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7 the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

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## **APPENDIX B: RESEARCH DESIGN**

### Development and Pretesting of Questionnaire

The research team used a variety of sources to develop the Central Authority Questionnaire. After reviewing the content of the Hague Convention on the Civil Aspects of International Child Abduction, as well as several articles on the Hague Convention, research staff developed a list of primary issues to be addressed by the survey. These primary issues were adapted into questions.

Staff produced several drafts prior to distributing the survey for pilot testing and review. The questionnaire was sent to two central authorities (United States and Quebec) for pilot testing, and reviewed by Adair Dyer, then at the Permanent Bureau of the Hague Conference on Private International Law, as well as members of the project's Advisory Board. A number of revisions were made based on input received from pilot testing and review.

### Sample

The entire sample of existing central authorities was contacted for participation in this research project. A list of contact names and addresses for central authorities was provided to project staff by the Hague Secretariat. The Hague Secretariat also provided transmittal letters by Adair Dyer for each country to be included with the mailing of the questionnaire.

In all, 57 central authorities were contacted to participate in the study. This included central authorities in 42 countries, as well as 10 provincial or territorial central authorities in Canada, and three central authorities in the United Kingdom (England/Wales, Scotland, and Northern Ireland). A questionnaire was also mailed to an identified contact person in Bosnia-Herzegovina, although an official central authority had not yet been established there.

### Data Collection

Researchers used an adapted Dillman<sup>25</sup> method in distributing the survey. Initial distribution of the survey took place in late August 1996. Each central authority or agent was mailed a package containing a blank questionnaire, personalized cover letters from both the ABA and the Hague Secretariat, and a return addressed envelope. Central authorities were advised of the availability of the questionnaire in three different languages (English, French, Spanish), and the ABA received facsimile messages from several central authorities requesting a copy of the questionnaire in a different language than the one they had received. New questionnaires were mailed immediately.

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<sup>25</sup>Dillman, D.A. (1978). Mail and telephone surveys: The total design method. New York: John Wiley.

Approximately three weeks following initial distribution of the survey, the ABA mailed out a follow-up letter to all central authorities, encouraging them to complete and return the questionnaire. With this letter, the ABA included a "Return Fax" page for recipients to complete and return by facsimile. This page was used for central authorities to inform the ABA that they had not received the initial mailing and/or requested a questionnaire in a different language. The ABA received five return facsimiles and one telephone call from central authorities requesting new copies of the questionnaire. These were mailed immediately.

In late-October, approximately two months following initial distribution of the questionnaires, the ABA sent out a second complete mailing (cover letters, questionnaires, return fax page, return envelope) to those central authorities that had not yet responded.

In mid-November, research staff contacted by facsimile the central authorities from whom we have received no communication. After numerous tries, the ABA was unable to complete transmission of the facsimile messages to three of the countries, and contacted the legal attachés at the respective embassies for alternative contacts and/or facsimile numbers.

As a final effort at data collection, in late November the ABA contacted the U.S. Department of State's Office of Children's Issues to request their assistance in contacting the central authorities in these remaining countries. Despite these efforts, it remains unclear whether the lack of response from three central authorities was due to their choice not to respond or to problems in their receiving any of the ABA's communications.

### Survey Response

A total of 44 central authorities responded to the survey, representing an excellent response rate of 77.1% of all existing Central Authorities. Central authorities of 32 countries, including the Canadian federal central authority, ten provincial or territorial central authorities from Canada, and all three central authorities from the United Kingdom (England/Wales, Scotland, and Northern Ireland) completed and returned the survey. The response rate by country was 76.1%.

### Limitations

The research design has some limitations which should be kept in mind as data results are reviewed. A primary issue in any survey which collects information from a multilingual sample is the difficulty in ensuring that both the questions and the responses are fully understood by researchers and respondents. While researchers made every effort to maintain consistency in both the translation of the survey and the translation of the open-ended answers, it is possible that subtleties in meaning may have been lost or misinterpreted.

Another limitation of the survey is the length of time which the Hague Convention has been in force in different countries. Several responding central authorities only recently adopted the Hague Convention, whereas others have been parties for several years. Thus, certain comparisons should be regarded with caution.

A major limitation is that many responding central authorities left some questions unanswered. Therefore, some of the information gathered (e.g., number of cases, countries most often dealt with) may reflect the responses of some of the responding central authorities only. Another limitation is that there is no means of verifying the accuracy of the answers provided by the respondent.

Most of the findings are provided as aggregate data, as is appropriate in most survey research. Therefore, those wanting the specifics about a particular country will not find the research to be as useful in any individual case as they might like it to be.

## APPENDIX C - RESPONDING COUNTRIES

Argentina	1 June 1991
Australia	1 January 1987
Austria	1 October 1988
Canada <sup>26</sup>	1 December 1983
Chile	1 May 1994
Colombia	1 March 1996
Denmark	1 July 1991
Finland	1 August 1994
France	1 December 1983
Germany	1 December 1990
Greece	1 June 1993
Hungary	1 July 1986
Israel	1 December 1991
Italy	1 May 1995
Luxembourg	1 January 1987
Macedonia	20 September 1993
Mauritius	1 June 1993
Mexico	1 September 1991
Monaco	1 February 1993
Netherlands	1 September 1990
New Zealand	1 August 1991
Norway	1 April 1989
Panama	1 May 1994
Poland	1 November 1992
Portugal	1 December 1983
Slovenia	1 June 1994
Spain	1 September 1987
Sweden	1 June 1989
Switzerland	1 January 1984
U.S.A.	1 July 1988
United Kingdom <sup>27</sup>	1 August 1986
Zimbabwe	1 July 1995

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<sup>26</sup>Completed questionnaires were also received from the following Canadian provinces/territories: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Ontario, Quebec, and Saskatchewan. Two did not respond.

<sup>27</sup>The central authorities of England/Wales, Scotland and Northern Ireland all responded to the survey.

**HAGUE COUNTRY QUESTIONNAIRE  
1996**

PLEASE CONFIRM THAT THE ADDRESS LABEL AND INFORMATION BELOW IS  
CORRECT. PLEASE MAKE ANY NECESSARY CHANGES.

**PLACE LABEL HERE**

Will contain contact name, org/agency, address, tel & fax numbers

PLEASE CONFIRM THAT THE INFORMATION BELOW IS CORRECT. PLEASE MAKE ANY  
NECESSARY CHANGES.

Date your country became a Contracting State of the Hague Convention: \_\_\_\_\_

Date since the central authority has been open in your country: \_\_\_\_\_

Name of government agency within which your office is located: \_\_\_\_\_

Primary purpose of government agency:

- ☐ Foreign relations
- ☐ Justice
- ☐ Law enforcement
- ☐ Health/social services
- ☐ Other: \_\_\_\_\_

(OPTIONAL)

Name and Title of  
Person filling out this  
Questionnaire \_\_\_\_\_

NAME/TITLE

Telephone Number \_\_\_\_\_

Facsimile number  
(if available) \_\_\_\_\_

**SOME OF THE FOLLOWING RESPONSES WILL BE USED IN A DIRECTORY OF CENTRAL AUTHORITIES AND A RESEARCH REPORT IN WHICH THE RESPONDING CENTRAL AUTHORITIES ARE IDENTIFIED. PLEASE MAKE A NOTE IF YOU WANT A SPECIFIC RESPONSE TO REMAIN ANONYMOUS.**

**PLEASE ANSWER THE FOLLOWING QUESTIONS ABOUT YOUR COUNTRY AND CENTRAL AUTHORITY:**

1. What system of jurisprudence does your country use? *(check one)*

☐ Civil law                      ☐ Common Law                      ☐ Other: \_\_\_\_\_

2. Does your country have one or more central authorities that discharge(s) duties under the Hague convention? *(check one)*

☐ Only one federal central authority *(go to question 3).*  
☐ More than one central authority *(state or provincial central authorities)*

(a) How should Hague return and access applications be submitted to central authorities in your country? *(check all that apply)*

☐ Directly to the state or provincial central authority  
☐ Through the federal central authority  
☐ Other: \_\_\_\_\_

(b) How does the federal central authority to which applications are addressed transmit them to the appropriate central authority within your country? *(check all that apply)*

☐ Mail                              ☐ Facsimile (FAX)  
☐ Telephone                      ☐ Personal delivery  
☐ Other: \_\_\_\_\_

(c) How has having more than one central authority effected the way in which Hague cases are handled? *(check one only)*

☐ Cases are processed more quickly  
☐ There are delays in processing cases  
☐ Other: \_\_\_\_\_

3. How many staff members (equivalent of full-time) at your central authority work on Hague cases? \_\_\_\_\_

4. Do these staff members have responsibilities other than working on Hague cases? ☐ No    ☐ Yes

(a) If yes, what percentage of staff time is spent on Hague cases: \_\_\_\_\_

5. What kinds of professional backgrounds do your professional staff members have? *(check all that apply)*

☐ Managers/administrators                      ☐ Psychologists  
☐ Lawyers    ☐ Physicians/nurses  
☐ Sociologists/social workers                      ☐ Paralegal  
☐ Other: \_\_\_\_\_



6. For specific cases, do you contact experts and/or organizations in your country who are not on the staff of your central authority? ☐ Yes ☐ No (Skip to 8)

7 Check those experts and organizations that you have contacted: (check all that apply)

- |  |  |
|--|--|
| <input type="checkbox"/> Local attorneys       | <input type="checkbox"/> International Social Services (ISS) |
| <input type="checkbox"/> Private investigators | <input type="checkbox"/> Missing children's organizations    |
| <input type="checkbox"/> Child welfare experts | <input type="checkbox"/> Interpol                            |
| <input type="checkbox"/> Translators           | <input type="checkbox"/> Local law enforcement               |
| <input type="checkbox"/> Immigration Officers  | <input type="checkbox"/> Other: _____                        |

### Hague Applications

8. Has your central authority received any applications relating to access rights?

- ☐ Yes ☐ No (go to question 10)

9. Indicate in what situations your central authority will help organize or secure access/visitation rights for parents or other family members: (check all that apply)

- ☐ Central authority will assist in securing access for parents seeking visitation only  
☐ Central authority will assist in securing access for other family members seeking visitation  
☐ Central authority attempts to secure access pending resolution of a Hague return case  
☐ Central authority attempts to secure access in other situations

(Explain: \_\_\_\_\_)

10. For Hague access applications, in what ways does your central authority assist parents to secure access rights? (check all that apply)

- ☐ Attempt to negotiate with the parent or family member who has the child  
☐ File petition for access in court  
☐ Provide names of attorneys to applicant parent  
☐ Other method: \_\_\_\_\_

11. How many Hague return and Hague access applications has your central authority received in the past two years? (If the Hague Convention was implemented in your country after 1994, please indicate the number of applications since implementation)

	<u>1994</u>	<u>1995</u>
(a) incoming Hague return applications: (child abducted from another country to your country)	_____	_____
(b) outgoing Hague return applications: (child abducted from your country to another country)	_____	_____
(c) incoming Hague access applications:	_____	_____
(d) outgoing Hague access applications:	_____	_____

12. From whom does your central authority accept Hague return and Hague access applications? (check all that apply)

- ☐ Central authorities of other countries  
☐ Left behind parents directly  
☐ Other sources: \_\_\_\_\_

13. Identify the three countries that your central authority deals with most frequently in:

(Print in name of countries below)

- (a) incoming Hague return cases:  
 (child abducted from another country to your country)
1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_
- (b) outgoing Hague return cases:  
 (child abducted from your country to another country)
1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_
- (c) incoming Hague access cases:
1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_
- (d) outgoing Hague access cases:
1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_

14. In what languages are Hague applications accepted by your central authority? (check all that apply)

- ☐ English ☐ French  
☐ Official language of your country ☐ Other \_\_\_\_\_

15. Does your central authority require that a Hague return application include all the elements specified in Article 8 of the Convention, or do you use a different application? (check one only)

- ☐ Our application includes *all* the elements found in Article 8 of the Hague Convention  
☐ Our application includes *some* of the elements found in Article 8 of the Hague Convention  
☐ We have designed our own application (Please include a copy of your application form when you return this survey).

16. Does your central authority require that an application include any of the following? (check all that are required)

- ☐ Application must be typed  
☐ Application must be limited to \_\_\_\_\_ pages.  
☐ Address where child is believed to be living  
☐ Child's birth certificate  
☐ Recent photograph of child  
☐ Recent photograph of abducting parent  
☐ Marriage certificate (if applicable)  
☐ Custody order(s) (if applicable)  
☐ Divorce decree (if applicable)  
☐ Arrest warrant (if applicable)  
☐ Documents establishing that abduction took place within one year prior to application  
☐ Income eligibility for legal aid  
☐ Other: \_\_\_\_\_

17. Do the legal documents in the application need to be officially authenticated or certified? ☐ Yes ☐ No
18. Will your central authority accept a Hague application by facsimile machine (FAX)? (check all that apply)
- ☐ Yes, incoming Hague cases  
☐ Yes, outgoing Hague cases  
☐ Only from selected countries (Explain: \_\_\_\_\_)  
☐ No applications accepted by facsimile machine  
☐ Does not apply - do not have a facsimile machine
19. Indicate if your central authority does any of the following when you receive a Hague application (check all that apply):
- ☐ Acknowledge receipt of application to country that contacts you on behalf of left-behind parent  
☐ Acknowledge receipt of application to left-behind parent directly  
☐ Assign a specific staff member to work on the case  
☐ Other: \_\_\_\_\_
20. How long does it generally take for your central authority to review an application and determine if you will accept the Hague case? (check one for each column)

	Incoming Hague return <u>cases</u>	Outgoing Hague return <u>cases</u>	Incoming Hague access <u>cases</u>	Outgoing Hague access <u>cases</u>
Immediately (less than 1 week)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
within 1 month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1 to 3 months	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 to 6 months	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. How many new Hague cases are opened in your office in an average month? (check one for each row)

	5 or <u>less</u>	5-10 <u>5-10</u>	10-15 <u>10-15</u>	More than 15 <u>than 15</u>
Incoming Hague return cases:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outgoing Hague return cases:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Incoming Hague access cases:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outgoing Hague access cases:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

22. At this time, how many **incoming** (cases in which a child was abducted to your country) and **outgoing** (cases in which a child was abducted from your country to another country) Hague cases does your office have that are still unresolved (case still considered "open" or "active")?

(a) Number of unresolved **incoming** Hague cases: \_\_\_\_\_

(b) Number of unresolved **outgoing** Hague cases: \_\_\_\_\_

23. In what percentage of incoming Hague cases is the child's exact location unknown? \_\_\_\_\_ %
24. If the child's exact location is unknown, what steps does your central authority take to assist in locating the child? (check all that apply)

- ☐ Does not assist in location
- ☐ Refers party to other resources to locate missing child
- ☐ Actively searches for child
- ☐ Other: \_\_\_\_\_

### Hague Application Process

25. Once your central authority decides to accept a Hague return case what steps do you take, if any, to assure that the abducting parent does not flee from your country? (check all that apply)

- ☐ No steps taken
- ☐ Law enforcement authorities are alerted
- ☐ Arrange for a responsible party or state authority to get temporary custody of child
- ☐ Remove child from care of person who has abducted child
- ☐ Alert and/or coordinate with state authority that tracks missing children
- ☐ Request that court issue warning/prohibition regarding leaving country
- ☐ Request that court order child turned over to child welfare agency pending proceedings
- ☐ Request that the court order abductor and child's passport turned over to court or to third party
- ☐ Request that the court order abducting parent's automobile impounded
- ☐ Request that court order plane tickets issued to abducting parent relinquished
- ☐ Request that court inform immigration/customs officials to prevent removal from country
- ☐ Monitor movement of parent in possession of child
- ☐ Other: \_\_\_\_\_

26. What services does your central authority provide directly or through an intermediary to left-behind parents in Hague return cases? Please indicate if this service is provided for incoming or outgoing Hague cases. (Check all that apply)

#### Child taken to your country

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

#### Child taken from your country

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

#### List of Services

Help to draft a petition for return of child

Telephone number for emergencies or crisis

assistance (Number: \_\_\_\_\_)

Office open beyond normal business hours

Act as liaison between left-behind parent and  
other country's central authority

Assist left-behind parent in completing Hague application

Represent applicant in court proceedings for return of child

Identify free legal representation for left-behind parents

Communicate with private attorney(s) of parents

Assist in collecting and forwarding application and  
documents to other country's central authority

Translate documents needed for judicial or administrative procedures

Communicate directly with other country's central authority about  
case on ongoing basis

Maintain regular contact with parties in ongoing Hague cases

Staff attends Hague hearings

Provide addresses of experts and/or professional organizations

Other services: \_\_\_\_\_

27. What information does your central authority provide about your country's laws that are relevant to a Hague Convention Application? (check all that apply)

- ☐ List of relevant statutes and/or case law
- ☐ Information concerning jurisdictional issues
- ☐ Information regarding law in your country passed to implement the Hague
- ☐ General information concerning family law in your country
- ☐ Non-Hague remedies available in your country
- ☐ Analysis of how specific provisions of the Hague such as "habitual residence" have been interpreted in judicial or administrative proceedings in your country
- ☐ Other international treaties beside the Hague that may be relevant
- ☐ None of the above (go to question 29)

28. Who covers the cost of preparation and distribution of this information?

- |   |   |
|---|---|
| <input type="checkbox"/> Either parent requesting the information         | <input type="checkbox"/> The abducting parent           |
| <input type="checkbox"/> Your central authority pays for the costs        | <input type="checkbox"/> Professional legal association |
| <input type="checkbox"/> The central authority requesting the information | <input type="checkbox"/> Other _____                    |

29. What effect do outstanding criminal charges have upon whether your central authority is able to proceed with a Hague return application? (check all that apply)

- ☐ No effect
- ☐ Criminal charges are sometimes helpful in efforts to locate child
- ☐ Criminal charges are sometimes helpful to proceeding with the case
- ☐ Criminal charges must be dropped before central authority will proceed with case
- ☐ Some judges will not order return if there are outstanding criminal charges
- ☐ Other effect: \_\_\_\_\_

#### Rejection of Hague Application

30. How many Hague return applications has your office rejected since 1994? \_\_\_\_\_

(If the Hague Convention was implemented in your country after 1994, indicate the number of rejections since implementation.)

31. What are the reasons for which your office has turned down/rejected a Hague return application? (check all that apply)

- ☐ Child is over 16 years old
- ☐ Too long between event (abduction/retention) and Hague return application submitted
- ☐ Applicant related to but not parent of abducted child
- ☐ Child was not wrongfully removed or detained
- ☐ No evidence that child is in country
- ☐ Other reasons: \_\_\_\_\_

32. How does your central authority notify an applicant that his/her Hague return application has been rejected? (check all that apply)

- ☐ Contact central authority of applying country and inform staff of rejection
- ☐ Contact and inform left-behind parent and/or his attorney directly
- ☐ Suggest alternative methods to applicant (e.g., filing for access rights: refer to local organizations)
- ☐ Other procedures: \_\_\_\_\_
- ☐ Provide a written explanation of reasons for the rejection

(a) Who receives a copy of this written explanation?

- ☐ Applying central authority
- ☐ Left-behind parent
- ☐ Left-behind parent's attorney
- ☐ Other: \_\_\_\_\_

(b) Is there a process for appealing the rejection of Hague applications? ☐ Yes ☐ No

33. Are there intercountry agreements or laws that are used in lieu of the Hague Convention in international child abduction cases?

- ☐ No (go to question 35) ☐ Yes Explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

34. Describe the advantages, if any, of using these agreements or laws in lieu of the Hague.

\_\_\_\_\_

\_\_\_\_\_

#### Child Return

35. Does your central authority try to secure voluntary return of the child? ☐ Yes ☐ No

If yes, describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

36. What percentage of the Hague return cases has your central authority resolved through voluntary returns? (check one only)

- ☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-100%

#### Hague Hearing/Proceeding

THE FOLLOWING QUESTIONS ADDRESS **INCOMING** HAGUE RETURN CASES ONLY (CASES IN WHICH A CHILD WAS ABDUCTED FROM ANOTHER COUNTRY TO YOUR COUNTRY).

37. Does your country conduct judicial hearings or administrative proceedings under the Hague Convention? (check only one)

- ☐ Judicial court hearings
- ☐ Administrative proceedings (e.g., administrative review by judge)

38. Indicate the level of court(s) that hear or review Hague return cases in your country: *(check all that apply)*

- ☐ Federal/national courts  
☐ Municipal courts

- ☐ Provincial/state courts  
☐ Other: \_\_\_\_\_

**Legal Representation**

39. Did your country make a reservation to Article 26 of the Hague Convention (e.g., so that your central authority would not be "bound to assume [the] costs and expenses of the proceedings [including] those arising from participation of legal counsel or advisors")? ☐ Yes ☐ No

40. How do applicant parents obtain legal representation for the Hague hearing, review or procedure in your country? *(check all that apply)*

☐ Your office represents the applicant parent

☐ Your office refers applicant parents to attorneys willing to take Hague cases

(a) How are attorneys selected for referral? *(check all that apply)*

- ☐ Speak language of left-behind parent  
☐ Experienced in handling Hague cases  
☐ Agree to take case at low or no cost  
☐ Other reason(s): \_\_\_\_\_

☐ Applicant parents are eligible for free legal assistance and representation

(a) What is the eligibility criteria for free legal assistance?

- ☐ Must meet income limit requirements  
☐ Hague applicants automatically qualify  
☐ Other criteria: \_\_\_\_\_

☐ Applicant parents are eligible for low cost legal assistance and representation

(a) What is eligibility criteria for low cost legal assistance?

- ☐ Flat fee of \_\_\_\_\_  
☐ Depends on income (*sliding scale*)  
☐ Other: \_\_\_\_\_

(b) Fees are used to cover:

- ☐ Attorney's time  
☐ Expenses incurred by attorney other than time  
*(e.g., telephone calls, filing fees, translation costs)*  
☐ Other: \_\_\_\_\_

☐ Other methods for obtaining legal representation:

41. How does your central authority notify the abducting parent of the Hague return proceedings? (check all that apply)

- ☐ Applicant parent or parent's representative required to notify abducting parent
- ☐ Notice of proceedings delivered by mail
- ☐ Notice of proceedings delivered in person
- ☐ Notice of proceedings sent by facsimile (FAX)
- ☐ Notice of proceedings published in newspaper or other publication
- ☐ Other method: \_\_\_\_\_

42. If the process for deciding Hague return cases in your country is a judicial court hearing, indicate who generally attends the hearing: (check all that apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Representative of your central authority                                       | <input type="checkbox"/> Representative of the applicant central authority |
| <input type="checkbox"/> Left-behind parent   | <input type="checkbox"/> Abducting parent                                  |
| <input type="checkbox"/> Abducted child or children   | <input type="checkbox"/> Attorney for left-behind parent                   |
| <input type="checkbox"/> Attorney for abducting parent  | <input type="checkbox"/> Friends and/or family of left-behind parent       |
| <input type="checkbox"/> Friends and/or family of abducting parent                                      | <input type="checkbox"/> Private investigator                              |
| <input type="checkbox"/> Law enforcement officers   | <input type="checkbox"/> Psychologist and/or sociologist                   |
| <input type="checkbox"/> Not applicable. Process is not a judicial court hearing. (skip to question 44) |  |
| <input type="checkbox"/> Other: _____   |  |

43. Who is permitted to testify at the court hearing? (check all that apply)

- |  |  |
|--|--|
| <input type="checkbox"/> Does not apply - no testimony is permitted  | <input type="checkbox"/> Your central authority                    |
| <input type="checkbox"/> The applicant central authority             | <input type="checkbox"/> Left-behind parent                        |
| <input type="checkbox"/> Abducting parent                            | <input type="checkbox"/> Abducted child or children                |
| <input type="checkbox"/> Friends and/or family of left-behind parent | <input type="checkbox"/> Friends and/or family of abducting parent |
| <input type="checkbox"/> Private investigator                        | <input type="checkbox"/> Law enforcement officers                  |
| <input type="checkbox"/> Expert witnesses (e.g., psychologist)       | <input type="checkbox"/> Other: _____                              |

44. Is there any specific age above which a child must be consulted by the judge regarding his/her thoughts and opinions about being returned as part of a Hague return proceeding? ☐ No ☐ Yes. If yes, what age? \_\_\_\_\_

(a) Does the judge consult directly with the child or is this sometimes done indirectly through: (check all that apply):

- ☐ An attorney representing the child?
- ☐ The child's guardian?
- ☐ A representative of a youth protection authority?
- ☐ Another counselor or therapist?
- ☐ Any other person (explain) \_\_\_\_\_

(b) Is there any minimum age below which the child may not be interviewed by the court? ☐ No ☐ Yes. If yes, what age? \_\_\_\_\_

(c) What is the lowest age at which a child's objections to being returned have been taken into account in practice? \_\_\_\_\_



45. Where do Hague proceedings take place in your country?

- ☐ A central location in the country
- ☐ The locale where the child is located
- ☐ Other location: \_\_\_\_\_

46. Does your central authority educate judges about the Hague Convention's provisions?

- ☐ Yes
- ☐ No (go to question 48)

47. Does your central authority provide any of the following to educate judges about the Hague Convention? (check all that are done)

- ☐ Training
- ☐ Published materials
- ☐ Communication with judges in pending cases
- ☐ Other: \_\_\_\_\_

### Hague Decisions

48. How long does it generally take for judges to make a decision following the Hague hearing or procedure? (check one only)

- ☐ immediately (same or following day)
- ☐ within 1 week
- ☐ within 1 month
- ☐ 1 month to 6 weeks
- ☐ over 6 weeks
- ☐ other: \_\_\_\_\_

49. If the judicial or administrative authority has not reached a decision within six weeks, do you request a statement about the reasons for the delay? ☐ Yes ☐ No

50. Indicate the outcome of Hague cases in your country since 1994: (If your country implemented the Hague Convention after 1994, use figures since implementation)

- (a) Percentage of cases in which judge ordered the child returned to the applicant country: \_\_\_\_%
- (b) Percentage of cases in which the judge denied petition for return (child to remain in your country): \_\_\_\_%
- (c) Percentage of cases with a voluntary return: \_\_\_\_%
- (d) Other decisions: \_\_\_\_%

51. Does your country provide for appeals to Hague decisions?

- ☐ Yes
- ☐ No (go to question 52)

(a) Who is eligible to appeal the Hague decision? (check all that are eligible)

- ☐ Your central authority
- ☐ Applicant central authority
- ☐ Applicant parent
- ☐ Abducting parent
- ☐ Other: \_\_\_\_\_

(b) What court hears the appeal? \_\_\_\_\_

Hague Court Order Enforcement

52. Following a return decision, are steps taken by the judge to assure that the abducting parent does not flee from your country? ☐ Yes ☐ No

53. In enforcing a return decision, have judges in your country done any of the following? (check all that apply)

- ☐ Warned abducting parent that a monetary fine would be imposed if child was not returned within the time required by the judge
- ☐ Imposed a fine on abducting parent when child not returned within the time required by the judge
- ☐ Warned abducting parent they would face imprisonment if child was not returned within time required
- ☐ Imprisoned the abducting parent
- ☐ Ordered law enforcement officers or social services to retrieve child
- ☐ Other enforcement: \_\_\_\_\_
- ☐ None of the above

54. In what percentage of cases where the judge in your country ordered the return of the child to the other country has the abducting parent failed to deliver the child? \_\_\_\_\_ %

55. What are some of the steps that abducting parents have taken to prevent the child from being returned? (check all that apply)

- ☐ Filed legal documents to block return of child
- ☐ Sent child into hiding with others
- ☐ Fled with child or made attempts to flee
- ☐ Other actions: \_\_\_\_\_
- ☐ None of the above

Undertakings

56. When ordering return under the Hague Convention, do judges in your country ever specify the terms or conditions for the return of the child? ☐ Yes ☐ No (go to question 60)

57. Identify the types of terms and conditions which judges in your country have imposed: (check all that apply)

- ☐ Supervised visitation until custody hearing
- ☐ Child placed in protective custody/foster care until custody hearing
- ☐ Psychiatric evaluation
- ☐ Applicant parent to provide transportation and/or lodging for abducting parent upon return of child
- ☐ Other: \_\_\_\_\_

58. In general, under what circumstances are terms and conditions included in the return order? (check all that apply)

- ☐ Cases in which child abuse is suspected
- ☐ Cases in which spouse abuse is suspected
- ☐ Cases of economic disparity between the parties
- ☐ Other: \_\_\_\_\_

59. In what percentage of cases do judges in your country specify the terms or conditions under which the return of the child will take place? (check one only)

- ☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-100%

60. Have courts in your country taken account of protective (safe harbor) orders issued by courts in the country to which the child is to be returned? ☐ No ☐ Yes *If yes, please explain.* \_\_\_\_\_
- 

Follow Up

61. Does your country monitor the progress of active **outgoing** Hague return cases (*cases in which the child has been abducted from your country to another country*)?
- ☐ Yes, monitored directly by the central authority  
☐ Yes, monitored by an intermediary  
☐ No
62. In cases where the Hague proceeding in your country has resulted in the child being ordered **returned to the applicant country**, to what extent does your central authority track the outcome of custody proceedings in the other country?
- ☐ Do not track custody hearing  
☐ Follow up telephone contact with central authority of other country  
☐ Follow up telephone contact with parent and/or attorney in other country  
☐ Request copy of custody orders issued  
☐ Other follow up: \_\_\_\_\_
63. In cases where the Hague proceeding in another country has resulted in the child being **returned to your country**, to what extent does your office track outcome of custody proceedings in your country?
- ☐ Do not track custody hearing  
☐ Follow up telephone contact with central authority of other country  
☐ Follow up telephone contact with parent in other country  
☐ Request copy of custody orders issued  
☐ Other follow up: \_\_\_\_\_
64. Are records of the outcome of Hague return cases which involve your country kept?
- ☐ No ☐ Yes

*Thank you for taking the time to complete this survey. The information you have provided will help central authorities, parents, attorneys, missing children's organizations, and lawmakers better understand how different countries handle cases of parental abduction. A copy of the survey results will be forwarded to your central authority as soon as they are available*

*Please return the completed survey to the following address:*

*Janet Chiancone  
Hague Country Survey  
American Bar Association Center on  
Children & the Law  
740 15th Street, NW - Ninth Floor  
Washington, DC 20005-1009  
USA*

*If you prefer, you may fax your completed survey to Janet Chiancone in the United States at (202)662-1755. If you have questions please call Ms. Chiancone at (202)662-1734.*

*Thank you very much!*

## APPENDIX F: UNDERTAKINGS

	Used in 1-25% of cases	Used in 26-50% of cases	Used in 51-75% of cases	Used in 76-100% of cases
<b>Countries</b> Argentina, Chile, Colombia, Macedonia, Monaco and Sweden also indicated the use of undertakings, but did not answer the more specific questions reflected in this chart.	Australia <sup>1,5,a,b,c,d</sup> Canada (Alberta, Quebec <sup>1,2,4,a,c</sup> , Saskatchewan)* France <sup>2,3,4</sup> Germany <sup>2,4,d</sup> Greece <sup>1,2,3,4,a,b,c</sup> Hungary <sup>2,a</sup> Israel <sup>5</sup> New Zealand <sup>2,a</sup> Switzerland <sup>3,4,a,b,c</sup> U.K. (Northern Ireland)* <sup>5,a,b,c,d</sup> United States of America	Canada (Fed. central authority <sup>4</sup> and Ontario <sup>1,4,a,b,c</sup> )*	Canada (Manitoba <sup>1,3,4</sup> ) U.K. (England & Wales <sup>1,6,c</sup> and Scotland	Canada (New Brunswick <sup>3</sup> )* Sweden <sup>1,2</sup>
<b>Types of terms and conditions</b>	1 supervised visitation until custody hearing 2 child placed in protective custody/foster care until custody hearing 3 psychiatric evaluation 4 applicant parent to provide transportation and/or lodging for abducting parent upon return of child 5 applicant to pay for return flights; applicant to pay maintenance	1 supervised visitation until custody hearing 2 child placed in protective custody/foster care until custody hearing 3 psychiatric evaluation 4 applicant parent to provide transportation and/or lodging for abducting parent upon return of child 5 applicant to pay for return flights; applicant to pay maintenance	1 supervised visitation until custody hearing 2 child placed in protective custody/foster care until custody hearing 3 psychiatric evaluation 4 applicant parent to provide transportation and/or lodging for abducting parent upon return of child 5 applicant to vacate home, provision of income for returning family, immediate raising of custody action in country of habitual residence. 6 To provide for the child until the courts of the requesting state can assume jurisdiction	1 supervised visitation until custody hearing 2 child placed in protective custody/foster care until custody hearing 3 psychiatric evaluation 4 applicant parent to provide transportation and/or lodging for abducting parent upon return of child 5 custody order to protection authorities in interim until child returned
<b>Circumstances under which terms and conditions are generally imposed</b>	a cases in which child abuse is suspected b cases in which spouse abuse is suspected c cases of economic disparity between the parties d other cases	a cases in which child abuse is suspected b cases in which spouse abuse is suspected c cases of economic disparity between the parties d other cases	a cases in which child abuse is suspected b cases in which spouse abuse is suspected c cases of economic disparity between the parties d one parent may not be able to raise custody action in jurisdiction of habitual residence or may not get legal aid	a cases in which child abuse is suspected b cases in which spouse abuse is suspected c cases of economic disparity between the parties d other cases



## Appendix G: Obstacles to Recruiting Pro Bono Attorneys in the U.S.

The ABA Center's ICAAN project experienced the following obstacles to finding *pro bono* legal representation in the U.S. for Hague applicants and to establishing the International Child Abduction Attorney Network:

- In the U.S., *pro bono* representation generally is reserved for truly indigent clients. Some attorneys have taken *pro bono* Hague cases only to find that the client had the ability to pay some or all of the costs. In last year's ICAAN report, I stated that ICAAN will ultimately fail if an acceptable standard defining eligibility for *pro bono* assistance is not established. Since that time, standards have been set up.
- Some experienced attorneys who have taken *pro bono* cases in the past no longer wish to be considered for these cases, because the costs were too high. For example, a leading family law attorney estimated that the cost to her firm in uncompensated time was more than \$100,000 in one Hague case, not including court costs, international long distance calls, etc.
- In the U.S., indigent clients are entitled to free legal representation in criminal cases only. Attorneys are not appointed by the court to represent parents in child custody jurisdiction or parental abduction cases. The decision to take a *pro bono* case is a matter of individual choice on the part of an attorney.
- Abductions to the U.S. are generally to the home community of the abducting parent. Often these are small and medium size towns, not major metropolitan areas. The small size of the local bar and the parochialism of the community present additional barriers to recruitment. Sometimes the abducting parent has already contacted multiple attorneys, further reducing the pool of those who could take the left-behind parent's case.
- Geographical distances are quite great in many states. Having attorneys on a *pro bono* list from Dallas, Texas will not be helpful if the case is in Corpus Christi, Texas, about 500 miles away. Even in a smaller state, such as Illinois, one is not going to find an attorney in Chicago who would travel four hours to provide *pro bono* representation for a client in a court in Urbana, Illinois.
- Some attorneys are concerned that *pro bono* representation on a Hague case may result in them having to represent the parent in the custody case. In the U.S., once an attorney accepts a *pro bono* case, it is difficult to be excused from the case. Although attorneys understand that the Hague case is separate from the case on the merits, they recognize that this is a distinction that many judges may not make. Therefore, they fear finding themselves caught in a long custody battle after the Hague case should the child not be returned.

- Due to the decrease in federal funding for the Legal Services Corporation, more nongovernmental programs have been created to secure *pro bono* representation for indigent clients in a wide variety of civil cases. ***Pro bono recruitment for attorneys is a highly competitive activity in the U.S.*** Many attorneys contacted on Hague cases are already taking on substantial *pro bono* commitments in their communities.
- The Legal Services Appropriation Act of 1996 prohibited legal services offices that receive federal funds from using any funds (federal, state, or private) to represent nonresident aliens. **Most Legal Services Corporation (LSC) offices will not take Hague cases.**
- The Legal Services Corporation issued interim regulations defining eligible aliens under the new law in August 1996. Since that date, few legal services offices have taken Hague cases for a nonresident alien. Most explain that they are prohibited from doing so.
- ICAAN staff drafted language that was included in the American Bar Association's comment to the interim regulations, which was submitted to the Legal Services Corporation. It appears that the Legal Services Corporation did not change its rules based on the comment regarding Hague applicants provided through the ABA. The ICAAN project continued to contact legal services offices and used them as referral sources to other attorneys in their communities.
- Recognition of Article 25 of the Hague Convention by Legal Services Corporation as an exception to the prohibition against representing nonresident aliens would not result in a noticeable change in legal representation for Hague cases. LSC offices are generally understaffed, carry heavy caseloads, and establish their own case priorities. Currently they handle very few family law cases, often limited to representing victims of domestic violence.
- Indigent U.S. citizens in domestic (interstate) parental abduction cases are not better served than nonresident aliens in securing *pro bono* legal representation in the U.S. **Finding affordable attorneys for civil cases in the U.S. is a widespread problem.**
- The lack of affordable legal representation is a major obstacle in parents retrieving their children who have been abducted to or retained in another state. Often attorneys are needed in both states. It is not uncommon for middle-income parents to spend all their savings, borrow money, mortgage their home, and draw down their retirement funds in order to cover the costs of obtaining and enforcing a custody order.
- Due to the complexity of interstate child custody jurisdiction laws and the emotionality of these cases, few attorneys are willing to take domestic cases on a *pro bono* basis. Hague cases are more appealing as it is practicing international law.
- LSC offices, as mentioned earlier, are handling few family law cases. Therefore, most left-behind parents in domestic cases are turned down for services even if they qualify financially for LSC services.



- If an LSC office has or is representing one parent, all LSC offices are prohibited from representing the other parent, because it is considered a conflict of interest. Thus, if the abducting parent first found the rare LSC office willing to take the case, the left-behind parent would not then be able to obtain LSC representation.



## Appendix E: CRIMINAL CHARGES

The follow table shows which countries indicated the following regarding outstanding criminal charges:

<b>Outstanding criminal charges have no effect upon whether the central authority is able to proceed with a Hague return application</b>	Canada (Alberta, New Brunswick* Germany Italy Mexico New Zealand Portugal Spain U.K. (England & Wales)*
<b>Criminal charges are sometimes helpful in efforts to locate child</b>	Argentina Canada (British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, Saskatchewan)* Denmark Finland France Greece Hungary Luxembourg Mauritius Monaco Norway Poland Sweden Switzerland U.K. (Scotland)* United States of America Zimbabwe
<b>Criminal charges are sometimes helpful to proceeding with the case</b>	Canada (Nova Scotia, Quebec, Saskatchewan)* Colombia France Greece Luxembourg Panama Poland United States of America Zimbabwe
<b>Criminal charges must be dropped before central authority will proceed with case</b>	Republic of Slovenia
<b>Some judges will not order return if there are outstanding criminal charges</b>	Australia Austria Canada (Manitoba, Quebec)* Greece Netherlands

\*The specific central authorities which indicated the answer for U.K. or Canada are listed in parentheses. Other responses included "we haven't had any cases with this characteristic" (Chile), and "can hinder voluntary return" (Scotland, U.K.). Israel and the Republic of Macedonia did not answer this question.



## **Chapter 4**

# **Selected Good Practices In International Family Abduction Cases**

**Linda K. Girdner, Ph.D.  
and  
Patricia M. Hoff, Esq.**



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## SELECTED GOOD PRACTICES IN INTERNATIONAL FAMILY ABDUCTION CASES

### Introduction

Laws exist on the federal and state levels to help prevent child abductions and to assist in the prompt recovery and return of abducted children. Law enforcement is mandated to enter missing children without delay into NCIC. State clearinghouses have been established to assist parents and help coordinate efforts with law enforcement. State and federal laws clarify which court has proper jurisdiction to prevent parents from "forum-shopping." Criminal custodial interference is a crime in every state and abducting children to another country is now a federal felony.

There are no guarantees that these laws will be applied in an effective and timely manner by those with the responsibility to do so. Studies on parental abduction have documented that, in large part, practitioners who have the responsibility to carry out many of these laws are woefully ignorant of the applicable laws or simply willfully ignore them (Girdner and Hoff, 1994). According to a survey conducted by Girdner (1994), family law attorneys reported that 60% of judges they appeared before and 70% of opposing counsel were unfamiliar with the Hague Convention on the Civil Aspects of International Child Abduction. Judges reported that 60% of counsel rarely or never adequately informed the court of the applicable provisions of the Hague.

Further documentation of these various problems alone is not likely to improve the situation. Instead it is important to describe "good practices" in ways that others could adopt. In this chapter, selected practices by those working on international parental abduction cases from a diverse set of backgrounds are described. Thus, this is not meant to reflect what is typically done by most practitioners. Rather it describes actions taken by some leading<sup>1</sup> practitioners, organizations, and agencies, according to the information that they provided us. Their jobs are not easy and they expressed their frustrations as well as their satisfaction.

Improvements in state law, sufficient funding, and adequate training are important in enabling good practice to occur. But heartfelt commitment combined with a pro-active and creative nature characterized many of the practitioners who have developed and sustained good practices.

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<sup>1</sup>By "leading" we are referring to entities that have an important role to play in international parental abductions as well as entities and individuals whose creativity and dedication place them on the cutting edge of this issue. This chapter is based on interviews and materials provided by practitioners or organizational representatives who describe what they consider their good practices. It is not based on empirical research independently evaluating the actual work of these offices or practitioners.

The areas of selected good practices covered in this chapter include state missing children's clearinghouses, missing children's organizations, county district attorneys' offices, judges and lawyers in family cases, and Central Authorities. We have included selected good practices from Canada and the United Kingdom as well. The information from this chapter was collected from direct interviews and requests for information, site visits, and practice manuals. Obviously the specific action taken must be appropriate to the particular case. The reader may wish to contact these organizations and sources for more information.

Obstacles can exist at so many different points in a case. Good practices by one practitioner or agency, though sometimes helpful, is often not sufficient for the successful return of the child. It is critically important that parents, or their designees (whether they be grandparents or new spouses) take an active role in their case. Parents cannot do it alone, but without the single-minded focus that parents bring to their case, the attention of busy practitioners may simply be drawn elsewhere.

## Nonprofit Missing Children's Organizations:

### Selected Good Practices of the National Center for Missing and Exploited Children

“After parents have done all they can to work within the parameters of the law, both domestic and foreign, and still they can't get their children back, they often become desperate. We understand how frustrating it can be, and work with parents to exhaust every opportunity, every option.”

Ernie Allen, President,  
National Center for Missing and Exploited Children

- ◆ NCMEC's state-of-the-art technology is revolutionizing the search for missing children.
- ◆ Incoming Hague petitions get immediate response: efforts are begun promptly to locate the child and find a pro bono attorney, and to educate judges and lawyers about the Convention.
- ◆ Criminal warrants can be very effective in Hague and non-Hague cases.
- ◆ As part of a transborder task force, NCMEC is working with Canadian counterparts to develop an intercept program for Canadian children transiting through the U.S. who are at risk of further abduction.
- ◆ Educating parents, lawyers, and judges on abduction prevention measures is a priority.
- ◆ NCMEC's institutional philosophy -- to go the extra mile to recover a missing child -- is reflected in the staff's cooperative approach to cases.
- ◆ Effective interaction between NCMEC and local, state, federal and international law enforcement officers and prosecutors helps find and recover abducted children.

### Background

The National Center for Missing and Exploited Children (NCMEC) was established in 1984 as a private, nonprofit organization to serve as a clearinghouse of information on missing and exploited children. Funding for NCMEC comes from the Department of Justice and many private corporate donors who contribute time, money and technology.

NCMEC provides technical assistance to individuals and law enforcement agencies on cases involving parental abduction, stranger abduction, runaway children, and child exploitation.

Locating abducted and missing children is one of NCMEC's critical roles. NCMEC coordinates with law enforcement agencies at the state, federal and international levels. It has direct access to the NCIC missing children's database. NCMEC disseminates photographs and descriptions of missing children. This nationwide photo distribution network has been expanded to have a global reach with the advent of the Internet. NCMEC maintains a World Wide Web site on which photos of missing children are posted and accessible to anyone around the world with access to the Internet.

NCMEC now handles incoming Hague Child Abduction Convention cases on behalf of the U.S. Central Authority in the State Department.<sup>2</sup> Two of the most pressing tasks associated with this new responsibility are locating children abducted to the U.S. or wrongfully retained here, and finding lawyers to represent the foreign parent in court proceedings under the Convention brought in this country. NCMEC's legal department has an International Division, which carries out the Central Authority's responsibilities in incoming international abduction cases. The International Division is headed by attorney and General Counsel Nancy Hammer who is assisted by three case managers. Quoted material in the following text is excerpted from an interview of Ms. Hammer and Elizabeth Yore, former director of NCMEC's legal department, conducted by Patricia Hoff.

**NCMEC's state-of-the-art technology is revolutionizing the search for missing children.**

Through the use of an extensive computer network, NCMEC is able to transmit images and information on abducted and missing children instantly to law enforcement throughout the U.S. and around the world. NCMEC is linked via CompuServe with law enforcement domestically (50 state Missing Children Clearinghouses) and abroad (Australia, Belgium, Canada, the Netherlands, and the United Kingdom, and INTERPOL), as well as with the U.S. Secret Service Forensic Services Division and the U.S. Department of State.

NCMEC's Internet site ([www.missingkids.com](http://www.missingkids.com)) now reaches a global audience with images and information on missing children. The daily "hit rate" on NCMEC's site is about one million. Sophisticated 'push technology' is used to link and disseminate images and information on missing children to any interested web address on the Internet in real time. NCMEC's databases are searchable in several languages.

Now law enforcement or local companies can scan and send images and information about a breaking case of a missing child electronically. This information is transformed into posters in-house at NCMEC, which can then be quickly disseminated on the web site and through various national programs in drastically reduced time lines.

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<sup>2</sup>Since submission (but before publication) of this report, NCMEC, in cooperation with the Office of Children's Issues, has assumed a greater role in outgoing Hague Convention cases. NCMEC provides instructions on how to proceed under the Hague Convention, and helps parents prepare their Hague applications and obtain supporting documents.

**Incoming Hague petitions get immediate response: efforts are begun promptly to locate the child and find a pro bono attorney, and to educate the judge and lawyers about the Convention.**

The International Division at NCMEC has been hugely successful in processing Hague Convention cases, with a return rate of about 80%! This success is attributable to a variety of factors.

One is the good relationships that NCMEC has developed with foreign central authorities, forged in part from NCMEC's presence at the last special commission meeting in the Hague about the International Child Abduction Convention.

NCMEC has developed many resources for locating abducted children in the U.S. These are marshaled to find children abducted to or retained in the U.S. in violation of the Hague Child Abduction Convention.

NCMEC's task of finding attorneys to represent foreign parents who file suit in the U.S. for return of their children under the Hague Convention is facilitated by the network of attorneys first developed by the ABA Center on Children and the Law under an OJJDP grant. The International Child Abduction Attorneys Network ("ICAAN") is now maintained (and expanded) by the International Division at NCMEC. ICAAN attorneys agree to represent a parent in at least one case on a pro bono basis.

Because so few judges in the U.S. have heard Hague cases, the State Department developed a letter that NCMEC sends to judges in whose courts Hague cases have been filed. The letter is not an advocacy piece for either party or the child, but rather an explanation of the Convention and what it requires the court to do. Copies of the Convention and other explanatory materials are attached to the letter to facilitate the judge's job. NCMEC sends copies of the correspondence to counsel on both sides of the case.

**Criminal warrants can be very effective in Hague and non-Hague cases.**

Each case is very unique as to what works, what doesn't work, which people will assist you, which won't. "We've seen criminal warrants being very, very effective both in non-Hague and Hague cases." In outgoing cases, NCMEC staff considers a number of factors to decide the best approach to the individual case. One consideration is the likelihood of getting law enforcement cooperation. Another is the country to which the child has been abducted.

When the child is abducted to a Hague country, it is NCMEC's experience that there is no guarantee that the child will be returned. (Some countries, such as the United Kingdom and Canada, are very efficient in their return of children under the Hague Convention.) This is why criminal law enforcement intervention may prove more effective than the Convention in some countries, and why criminal warrants may be crucial. The case of a child abducted to Mexico was cited as an example. The Hague Convention remedy was so slow as to be no remedy at all, thus

necessitating alternative measures. The intervention of law enforcement brought about the child's return. Using law enforcement contacts to secure an abducted child's return is consistent with NCMEC's mission, albeit in tension with the State Department's diplomatic preference for the Convention as the vehicle for returning children to the U.S.

NCMEC believes that law enforcement personnel are in the best position to make things happen in abduction cases. Law enforcement officers in the U.S. should make contacts overseas. They must understand that their case is not over if the child is taken abroad, but that "global law enforcement" can be coordinated.

**As part of a transborder task force, NCMEC is working with Canadian counterparts to develop an intercept program for Canadian children transiting through the U.S. who are at risk of further abduction.**

A transborder task force was established recently to create in the United States a program similar to Canada's Project Return. (See page 4-82.) That project seeks to identify and intercept abductor-parents as they attempt to enter Canada, and to help locate abducted children already in Canada. NCMEC is participating on this task force in discussions and joint training. Two meetings have already taken place. One specific goal is to develop a way to intercept abducted Canadian children who are traveling through the U.S. en route to American airports before they can be spirited to countries from which their return would be unlikely or impossible.

**Educating parents, lawyers, and judges on abduction prevention measures is a priority.**

Preventing abductions, while a universal goal, is especially critical when the child is a dual national or may be taken to a Moslem country. Parents seeking to recover children who have been taken to Moslem countries may find it impossible either to be awarded custody under the laws and customs of the foreign country, or to remove the children from the foreign country even if a local court has awarded them custody. NCMEC includes prevention strategies in all continuing legal education programs they do, and covers this topic in one-on-one conversations with lawyers.

Judges need to become educated about the realities of international law, and the obstacles facing parents who seek to recover children taken to non-Hague countries. Once a child is removed from the U.S. to a non-Hague country, the chances of the foreign court honoring the U.S. custody order may vary from slim to none. Judges aware of the difficulties of getting a child back will be more likely to order stringent measures to prevent the removal in the first place.

When parents call seeking advice on preventing abductions, especially to the Middle East, NCMEC asks them to have their lawyers (and any guardian ad litem for child) call to hear the advice themselves. "It's a very sobering, direct discussion.... If the child is abducted to Lebanon, Saudi Arabia, Egypt, wherever, you may never see the child again.... The reality right now is this is not a priority of the U.S. government, that there is no mechanism to get these children returned and the only protection for the kids is prevention.... And I have to do everything humanly possible to get the message out that this can be prevented now.... You move heaven and earth to prevent that child from being unsupervised with that parent...."

NCMEC provides lawyers with the State Department's generic prevention letter as well as various prevention pieces produced by ABA Center on Children and the Law.

In the case of dual national children and children who may be taken to Moslem countries, NCMEC suggests strictly supervised visitation as the best way to prevent abduction. Other prevention measures they recommend include bonds, passport controls, and restrictions on removal. These as well as other prevention tips are outlined in publications available free of charge from NCMEC.

**NCMEC's institutional philosophy -- to go the extra mile to recover a missing child -- is reflected in the staff's cooperative approach to cases.**

The International Division, which consists of three case managers under the direction of Nancy Hammer, responds immediately to incoming Hague cases. "It's a great staff that moves rapidly on these cases to locate, to get attorneys. These cases are moving very efficiently... That's a child's life in those files and the whole purpose of the Hague is to move quickly."

The placement of the International Division within the legal department is conducive to answering the inevitable legal questions that come up in international and domestic cases.

NCMEC case managers follow up "... to make sure that people don't drop the ball. So it's not enough just to refer somebody to another entity, you have to go back to that other entity and make sure that they did what they were supposed to do."

Help in international cases is not limited to Hague cases. When NCMEC is contacted about an incoming abduction case from a non-Hague country, parents are promptly informed about the Uniform Child Custody Jurisdiction Act, referred to INTERPOL and the state missing children clearinghouses, and advised about steps that should be taken in their home country.

"There's always creative brainstorming" among the case managers in the International Division who do not consider a case closed until the child is located and recovered. In the end stages of an outgoing international abduction case, after the child has been located abroad, NCMEC can assist an indigent parent in obtaining money to transport the child back to the U.S., assuming the parent meets the eligibility criteria for victim reunification travel funds. NCMEC is the parent's liaison to the Justice Department's Office of Victims of Crime which manages the fund.

**Effective interaction between NCMEC and local, state, federal and international law enforcement officers and prosecutors helps find and recover abducted children.**

NCMEC coordinates with the local prosecutor and law enforcement, state missing children's clearinghouses, the FBI, INTERPOL, and other foreign law enforcement counterparts to help locate and recover abducted children. They reach out to all the various law enforcement agencies or entities that would impact not only on locating but getting the child returned. "I think the best outgoing cases are when local law enforcement, the FBI, and ourselves and states are all working together to get the child back quickly... and when a parent who is able to function and

follow through on some of the steps that need to be taken only by a parent. The prosecutor is key."

The recently-established FBI Office on Crimes Against Children should make a big difference in FBI responsiveness to abduction cases as well as other cases involving crimes against children. Every FBI office in the country is to have two agents assigned to work cases involving children. This should dispense with the burden NCMEC and others now face of convincing an FBI agent that investigating parental abductions really is a part of their job. "Hopefully, we can skip that step."



## Nonprofit Missing Children's Organizations:

### Selected Good Practices of Vanished Children's Alliance

"We try to give families of abducted children a little sense of control over an uncontrollable situation."

Georgia K. Hilgeman, Agency Executive Director  
Vanished Children's Alliance

- ◆ Really listen and give support to left-behind parents on a long-term basis, including preparing them for reunification.
- ◆ Give parents some control over their lives by encouraging their active involvement in resolving their cases.
- ◆ Once a case is registered, become actively involved in trying to locate the abducted child, including coordinating closely with law enforcement in a positive, non-confrontational manner.
- ◆ Acting as the left-behind parent's liaison, get all the key players (law enforcement, NPOs, NCMEC, State Department, etc.) to work together and share pertinent case information.
- ◆ Help prevent abductions by (1) talking a parent out of a threatened abduction; (2) contacting law enforcement to alert them to potential abduction; and (3) suggesting various provisions that can be included in the court order, and other steps a parent can take to stop an abduction before it happens.

### Background

The National Center for Missing and Exploited Children (NCMEC) is the largest and best-known organization in this country that provides services to parents whose children have been abducted or who are at risk of being abducted. But NCMEC is not alone in providing help to left-behind parents and families at risk for abduction. Dozens of smaller organizations have been established throughout the country to respond to family abduction cases locally, nationally, and/or internationally. There are a few that specialize in international abduction cases. Most of these organizations are nonprofit, hence the designation as NPOs (nonprofit organizations). The range of available services varies, as do the professional background and expertise of the caseworkers on staff who provide the services. Generally speaking, NPOs are accessible to left-behind parents via toll-free telephone lines, and services are provided free of charge. NPOs often play the role of liaison between the left-behind parent and government agencies and officials.

## Vanished Children's Alliance

Vanished Children's Alliance (VCA) is an NPO based in San Jose, California which has been in the business of helping left-behind parents of abducted children for eighteen years. Agency Executive Director, Georgia Hilgeman, recently opened the Training and Public Relations arm of VCA in Rockville, Maryland. Because of their continuous and ongoing service to parents in interstate and international abduction cases, we invited Ms. Hilgeman to participate in the "Selected Good Practices" survey. Quoted material in the following text is excerpted from an interview of Ms. Hilgeman conducted by Patricia Hoff on November 11, 1997.

Once a case is registered with VCA in accordance with its protocol, services are provided to parents free of charge. A toll-free telephone line (1-800-826-4743) is available to report sightings of abducted children as well as to request help. VCA plays a crucial role both in encouraging parents to take an active role in searching for their children, and in coordinating closely with law enforcement with the goal of finding and returning the child to the jurisdiction so that custody-related disputes can be resolved by the courts. VCA's mission is child-focused.

### **Really listen and give support to left-behind parents on a long-term basis, including preparing them for reunification.**

Significantly, VCA is a place where parents can feel heard. "People are dealing with a lot of anger and a lot of frustration and they need to be able to ventilate and verbalize their concerns." Caseworkers report a common complaint of left-behind parents -- that too many agencies are short with them. It is no wonder that families often tell VCA, "You know, you're the first people that listened to me. Thank you, that really meant a lot."

One explanation for why parents respond positively to VCA's caseworkers is the background in social science and social work they tend to have. Good listening skills come not only from professional training, but from on-the-job experience. While inviting parents to talk and be heard, VCA establishes limits (*e.g.* how many times a parent may retell his or her story).

VCA prepares parents for reunification when recovery of the child is likely. In VCA's experience, reunification is a very important area that often goes unaddressed. VCA talks to the left-behind parent about issues surrounding reunification when recovery appears to be a realistic possibility. Premature discussion can raise false hopes and heighten disappointments. VCA explains the need to make the reunion safe, and to try to ease any additional trauma to the child. The child's needs are paramount. Media and hoards of relatives hovering at the reunion site may be very frightening to a child, particularly one who has little memory of the left-behind parent to whom he or she is being returned. Parents are urged to consider how the child may be feeling. VCA prepares left-behind parents psychologically for the possibility that the child will not respond in the way they would think or hope.

**Give parents some control over their lives by encouraging their active involvement in resolving their cases.**

Families who contact VCA are typically in great distress. VCA tries to give them “ a little sense of control over an uncontrollable situation” by encouraging their active involvement in their cases. VCA makes suggestions, on a case-by-case basis, about what a parent can do. VCA may recommend several things and ask the parent to report back to let them know how they worked out. Then, additional action steps may be recommended. Suggestions may include specific search tips for locating the child; advice on disseminating flyers of the child; recommendations to contact NCMEC for their publications and to request that the child’s poster be posted on the Center’s Internet cite; advice to call the State Department; and tips on starting a Hague return case.

**Once a case is registered, VCA becomes actively involved in trying to locate the child, including coordinating closely with law enforcement in a positive, non-confrontational manner.**

VCA has a number of protocols for handling parental abduction cases. VCA is contacted by people from across the country, usually by phone. Caseworkers use an intake form initially to record all necessary information, then a registration packet which, among other things, requires a copy of the custody order. This can be an ex parte order in a family abduction case. VCA will help a noncustodial parent whose child is abducted in violation of visitation rights if that parent obtains a temporary custody order. VCA verifies that the child has been entered into the NCIC. Releases are obtained. Law enforcement agencies or, in California, District Attorney’s Child Abduction Units, are contacted to verify the legitimacy of case. Once all of the preliminary steps are complete, the child’s case is registered with VCA. Then, VCA contacts law enforcement and the real work begins to locate and recover the child.

How VCA’s caseworkers communicate with law enforcement is a “best practice” worthy of emulation. VCA makes recommendations to law enforcement that do not sound confrontational. For instance, rather than demanding certain action, or faulting law enforcement for inaction on a particular case, VCA prefaces requests in non-threatening, constructive terms. For instance, “Our experience in the past with a similar type of case was that law enforcement did ....” Or, “Have you thought about....” It is VCA’s observation that law enforcement officers are rotated so rapidly that very often the officer in charge of a parental kidnapping simply does not know what to do. The right approach can win this person over on behalf of the abducted child.

VCA immediately reports leads and sightings directly to law enforcement for verification and appropriate action. This fosters a trusting relationship between VCA and law enforcement. VCA does not share a sighting or lead with a parent until it has been verified by police and police authorize the disclosure. This avoids an emotional roller coaster for the left-behind parent and the potential for bad consequences.

**Acting as liaison for the left-behind parent, VCA gets all the key players (law enforcement, NPOs, NCMEC, State Department, etc.) to work together and share pertinent case information, with the goal of locating and recovering the abducted child.**

VCA is a liaison between the left-behind parent and the many other agencies and officials that may have a role in locating and securing an abducted child's return. The VCA strives to build a trusting relationship between and among the various "players." There is a better chance of recovering a child if all of the players are working together and sharing information. VCA is part of a Victim Services Network that includes, among other agencies, domestic violence advocacy groups.

**Help prevent abductions by (1) talking a parent out of a threatened abduction; (2) contacting law enforcement to alert them to a potential abduction; and (3) suggesting various provisions that can be included in the court order, and other steps a parent can take to stop an abduction before it happens.**

VCA seeks to prevent abductions in three ways: counseling the prospective abductor against abduction; contacting law enforcement when abduction has been threatened or is likely; advising parents who fear an abduction on a variety of safeguards they can seek to put in place.

If VCA is contacted by a would-be abductor, the caseworker's response is (1) not to become hostile; (2) to explain the legal ramifications for the parent, and the harmful psychological consequences for the child, of an abduction; (3) to convey the impression that many government entities will be actively in pursuit, diminishing the chances of a successful abduction; and (4) to obtain as much information about the parent as possible. The information would then be communicated immediately to law enforcement who can intervene as the circumstances require.

If VCA is contacted by a parent who fears an abduction, that parent will be asked what country the child is likely to be taken to. The Hague Convention return remedy will be explained. If the parent does not already have a custody order, she or he will be advised to consider getting one.

The parent will also be told about provisions in custody orders that can help prevent abductions, including requiring the other parent to post a bond, surrender passport, obtain prior consent before leaving the country, etc. The kinds of judicial safeguards that VCA recommends depends to some extent on the country the child may be taken to. Stricter measures are needed with Middle Eastern countries as well as some Hague Convention countries that have not promptly returned children to the U.S. Mexico was given as an example. A VCA staff member may help parents who are representing themselves.

The parent will be advised to record important identifying information about the other parent, such as social security number, licence number, passport number, name and addresses of relatives in other countries. If the child hasn't been fingerprinted, the parent will be counseled to do that now. Parents are also told to contact NCMEC for their free publications on preventing and remedying parental abductions. VCA also provides parents with literature which includes various safety tips and a child ID sheet.

State Missing Children's Clearinghouses:  
Selected Good Practices of the New York State Missing and  
Exploited Children's Clearinghouse

“Parents need someone to go to bat for them.”

Diane Vigars

New York State Missing and Exploited Children's Clearinghouse

- ◆ Take abduction prevention seriously.
- ◆ Listen, seek to understand, and don't make biased judgments.
- ◆ Provide information and educate other practitioners
- ◆ Promptly enter children in NCIC and investigate whereabouts.
- ◆ Coordinate case efforts with law enforcement and other agencies.
- ◆ Facilitate community-based education and prevention.
- ◆ Act as state contact for the U.S. Central Authority in Hague Convention cases.

Background

All fifty states currently have a state missing children's clearinghouse. This is an increase of 7 clearinghouses, since 1992 when they were included in the Obstacles project. Clearinghouses are either established by executive order or legislative mandate. The difficulty has not been in setting up clearinghouses as much as it has been in providing them with adequate funding to carry out their tasks. Some states have failed to appropriate resources for maintaining the clearinghouses. The clearinghouse then becomes a mailing address for receiving missing children's information. The New York State Missing Children's Clearinghouse has had a long track record of good work, sufficient funding, and high numbers of international cases, due to the state's geographical propinquity to Canada and major international airports. The statutes relating to criminal custodial interference in New York are not very good. They do not cover precustodial abductions. Post-custodial abductions are only a felony if it the child has been taken out of state. Perhaps especially where state statutes are not the best, clearinghouses can take an important and active role in resolving these difficult cases.

## New York State Missing and Exploited Children's Clearinghouse

Established in 1987, the New York State Missing and Exploited Children's Clearinghouse is required to carry out an expansive and diverse set of activities relating to missing and exploited children. See attachments A and B for more specific information. In this section, some of their good practices are identified. (Linda Girdner collected this information from Diane Vigars at the NYS Missing and Exploited Children's Clearinghouse.)

### **Take abduction prevention seriously.**

Sometimes a parent contacts the Clearinghouse prior to an abduction, perhaps because the marriage to a foreign-born spouse is ending and the parent is concerned about a possible international abduction. In such cases, the Clearinghouse personnel are able to advise parents to get a custody order which includes preventive measures. They suggest that the custody order include a specific prohibition that the child cannot be removed from the state or the country. Although this may not always be effective in preventing an abduction, it can facilitate more prompt enforcement subsequent to an abduction.

Clearinghouse personnel also suggest that a bond be posted by the parent at risk for abducting and that the bond money be released to the left-behind parent in the event of an abduction. In this way, should an abduction occur, the left-behind parent would have access to resources to pay for attorneys' fees or other expenses.

They also recommend that the parent contact the U.S. Department of State to request that a stop be placed on the issuance of a passport for the child or that an existing passport be revoked. This is not foolproof because if the potential abductor is a citizen of another country, or has dual citizenship, then he or she may be able to get a foreign passport for the child or have the child put on his or her foreign passport.

### **Listen, seek to understand, and don't make biased judgments.**

The NYS Clearinghouse prides itself on its aggressive action on behalf of abducted children without prejudging parents. By the time some left-behind parents find out about the NYS Clearinghouse, they almost expect to be given the "brush off" or the "run around." Some parents feel they have been rebuffed by others because they were fathers who wanted their children back, or mothers who were either not emotional enough or too emotional to suit others, or had a foreign sounding name. The Clearinghouse staff listens, letting the parent tell the story. This helps reduce the parent's anxieties. Then the staff can gather more information from the parent and describe what the next steps might be that are appropriate for the specific case.

## **Provide information and educate other practitioners.**

The Clearinghouse staff provides information to law enforcement, lawyers, judges, law clerks, and clerks of the court throughout the state as part of their assistance to parents in specific interstate and international cases. For example, they often fax samples of language relating to preventive measures to attorneys. They send reluctant law enforcement officers copies of the National Child Search Assistance Act and the NYS Executive Law to help educate them about the actions mandated under the federal act and state law. This pro-active educational role not only can help with the specific case at hand, but provides concrete materials that practitioners can then use in similar future cases.

New York's criminal custodial interference statute is limited to post-custodial abductions. That means that an abduction undertaken before a custody order is issued is not a crime. Recovery assistance by law enforcement, including the Clearinghouse, can only go forward when a custody order exists.

Unlike in many other states, law enforcement officers in New York do not require a separate pick up order authorizing them to recover a child as long as a certified custody order exists and the child has been entered in NCIC. Therefore, the Clearinghouse strongly urges parents to obtain an order as quickly as they can, so as not to delay location and recovery efforts. They assist parents along the way by educating and informing the professionals who may otherwise present obstacles to obtaining the necessary order.

Parents are encouraged to include language in their custody order that may enable their child to be picked up if located in another state, where a pick up order would normally be required. The Clearinghouse has faxed specific language to judges who have called to ask how best to word such an order. A few examples are offered below:

*Example 1:* ORDERED, ADJUDGED AND DECREED, that any law enforcement agent is directed to enforce the Order of the Court dated \_\_\_\_\_ and entered in the \_\_\_\_\_ County Clerk's Office, and it is further

ORDERED, ADJUDGED AND DECREED, that any law enforcement agent is directed to enforce the terms of this Order and shall be directed to pick up the child(ren) of the parties, to wit: (child's name), and to deliver him/her to the Plaintiff or to the appropriate agency if the Plaintiff shall not be immediately available.

*Example 2:* ORDERED, that the minor child, (child's name), be immediately and forthwith turned over to the custody of the Petitioner, (custodial parent's name), for return to Petitioner's home in the City of \_\_\_\_\_, New York and the return of said minor child, (child's name), shall be effectuated by any law enforcement officer of the State of \_\_\_\_\_ (whatever state the child is located in).



If the parent does not have a custody order or needs an existing order enforced, but cannot afford an attorney, the Clearinghouse staff helps connect the parent with the clerk of the court in the appropriate county. In New York State, unlike many other states, the pro se parent (that is, the parent representing him or herself) has no filing fees and is usually able to get assistance from the clerks of the court in filling out the necessary forms. Clearinghouse intervention may also be necessary in some cases.

Many judges in New York do not want to issue a custody order after an abduction when one party (the abducting parent) does not have the opportunity to be heard. These ex parte orders are a necessary threshold for New York law enforcement agencies, including the Clearinghouse, to be able to locate and recover a missing child. Therefore, the Clearinghouse works to educate parents, clerks of the court, and judges as to the importance of ex parte orders in abduction cases.

Sometimes the Clearinghouse writes a letter to a left-behind parent clarifying that an ex parte custody order is needed before the child can be recovered and brought back to the proper jurisdiction and that such an order is a temporary one. A final determination would be made after both parties had an opportunity to present testimony to the court. Parents can then show the letter to the judge. This method of educating judges lead some to issue ex parte orders, allowing location and recovery efforts to proceed. The Clearinghouse also explains alternative service under the Uniform Child Custody Jurisdiction Act to court clerks who then can share this information with their judges.

### **Promptly enter children in NCIC and investigate whereabouts.**

The Clearinghouse can enter information about a missing child into the National Crime Information Center (NCIC) on their in-house terminal, which is not the case with all state clearinghouses. This practice is particularly helpful in incoming abduction cases because parents in other countries do not usually have a way for local law enforcement here to make an entry. Although the FBI will enter the child in NCIC when local law enforcement does not, this may result in a delay. The Clearinghouse's authority to enter a missing child directly into NCIC enables that information to be promptly entered and the investigation as to the whereabouts of the child to begin.

To locate the child, the Clearinghouse needs descriptive information on the abductor and the child, any possible addresses or locations where they might be staying or visiting, and good quality photographs of all parties. It is also helpful if they have as complete information as possible on the abducting parent's family, connections, and occupation. The Clearinghouse staff were clearly frustrated at the obstacles they faced in locating children in incoming Hague cases at the time of the initial interview for this report in 1995. Clearinghouse staff reported often feeling stymied, because the State Department did not return phone calls or did not provide significant or quality (e.g. photographs) information needed for location efforts. They reported that this

delayed location efforts sometimes for months, while the Hague application was pending. If the left-behind parent contacted them directly or if the child were part of NCMEC caseload, the Clearinghouse could gain the information needed to find the child.

According to Diane Vigars, when the National Center for Missing and Exploited Children took over the case management responsibilities for incoming Hague cases for the U.S. Central Authority in September 1996, "It was like night and day. It was fantastic! Whatever I asked for I would get. They'd FedEx it overnight. They called back immediately. We started doing location after location."

### **Coordinate case efforts with law enforcement and other agencies.**

Additionally, the Clearinghouse has formed a very strong relationship with the NY/NJ Port Authority Police Department's youth Services Unit which operates from the Port Authority Bus Terminal in New York City, and the New York City Police Department Sexual Exploitation of Children Unit. These exceptional units provide assistance to the Clearinghouse on incoming international abduction cases, as well as assistance in locating at-risk runaways entering the U.S. at NYC. If an abduction is suspected to be occurring through one of New York's airports, the Clearinghouse promptly informs law enforcement at those points. They have contacts with the Port Authority Police Department at LaGuardia and Kennedy International Airports. The Clearinghouse also calls the Immigration and Naturalization Service (INS) at these points of entry to advise the INS officer when a parent or child may be entering the country illegally and asking for their cooperation in detaining a possible child abductor and abducted child until law enforcement arrives. Over time these contacts build relationships and trust that make future dealings more efficient and effective.

With the Mohawk Nation located on both the New York and Canadian sides of the border, the New York State Clearinghouse sometimes needs to address abductions to sovereign Indian land either by Indians or by non-Indians which may be within the U.S. or within Canada. Whereas the Royal Canadian Mounted Police have jurisdiction to investigate on Indian reserves, the same is not true on the American side where greater sovereignty is given to tribes. The Clearinghouse works through a person within their larger agency who generally handles Indian affairs and has built relationships over time.

Due to the common border with Canada, the New York State Clearinghouse staff shares many cases with the Royal Canadian Mounted Police. They are in frequent communication, particularly with Sergeant John Oliver of the Missing Children's Registry. (See "Good Practices from Canada" on pages 52-55). Through collaborative problem-solving across the international boundary, both organizations have resolved many cases, returning children to where they belong. This type of international professional relationship succeeds partly due to the commitment on both sides to the children involved, respect for one another, understanding of each other's responsibilities, and the integrity to share the credit of successes.

**Facilitate community-based education and prevention.**

The New York State Clearinghouse has spearheaded Project Outreach, which brings law enforcement, social services, and schools together to discuss missing children's issues. Clearinghouse staff helps schools with their mandate to provide education about missing children by providing them with information and linking them to local nonprofit organizations with additional resources. For example, the NCMEC New York office disseminates educational information through the Kids & Company program. As a result of the various outreach activities, the Clearinghouse has built rapport with many schools and brought them into the network of communications. This has paid off when the Clearinghouse needs to call a participating school in relation to a particular missing child.

The Clearinghouse staff also participates in training New York State Juvenile Officers in issues relating to missing and exploited children. The presence of past and current Clearinghouse personnel on the board of or actively participating in the juvenile officers' state organization creates a heightened awareness of missing children's issues and a network of members more ready to assist in a particular case when asked.

**Act as state contact for the U.S. Central Authority in Hague Convention cases.**

By governor's proclamation the New York State Missing Children's Clearinghouse is the state contact for the U.S. Central Authority in Hague cases. When the Clearinghouse learns from the Central Authority in the U.S. or a foreign Central Authority that a Hague return petition is pending, the Clearinghouse can enter the missing child in NCIC as soon as they have the descriptive information to do so. An investigation to locate and recover the children can then begin. When local law enforcement locates a child and abductor in Hague cases, they contact the Clearinghouse which then informs the Central Authority. The Clearinghouse advises law enforcement to locate them as surreptitiously as possible so as not to prompt the abductor to flee. An apprehension order then needs to be issued by the judge to authorize the recovery of the child.

In some cases, the U.S. Central Authority has asked the Clearinghouse to verify the location and seek the voluntary return of the child. This is a challenging request as contacting the abducting parent might increase the risk of flight. In these cases, they contact local law enforcement and request a "discreet" investigation to verify residence. They may also contact local schools to determine if the child is enrolled.

Flight risk is always a concern. Even if no contact is made with the abducting parent to seek a voluntary return, the parent is notified of the Hague proceeding and could still attempt to flee if the child has not first been picked up. Consequently, a successful recovery often depends on the Clearinghouse coordinating various players and actions in the case. This can include discrete location efforts on the part of local law enforcement, judges willing to issue prompt and properly worded pick-up orders, and officers picking up the child while reducing the risk of flight and the trauma to the child. While each case can be unique, prior to the Hague proceedings the clearinghouse staff will often coordinate the pickup and placement of the child with law enforcement, child protective services, NCMEC's International Division, and the court.



STATE OF NEW YORK  
DIVISION OF CRIMINAL JUSTICE SERVICES  
EXECUTIVE PARK TOWER  
STUYVESANT PLAZA  
ALBANY, NEW YORK 12203

JOHN J. POKLEMBIA  
DIRECTOR OF CRIMINAL JUSTICE  
AND  
COMMISSIONER

Attachment A

NEW YORK STATE MISSING AND EXPLOITED  
CHILDREN CLEARINGHOUSE

In 1984, through electronic data processing and related procedures, the New York State Division of Criminal Justice Services Statewide Missing Children Register was established following passage of Chapter 837-e of the New York State Executive Law. In 1987, in addition to the activities of the Statewide Central Missing Children Register, the New York State Division of Criminal Justice Services established the Missing and Exploited Children Clearinghouse (MECC) under Chapter 837-f of the Executive Law.

Under the New York State Executive Law the Missing and Exploited Children Clearinghouse is authorized to:

- Plan and implement programs to ensure the most effective use of federal, state and local resources in the investigation of missing and exploited children
- Exchange information and resources with other states, and within New York State, concerning missing and exploited children
- Establish a case data base which will include nonidentifying information on reported children and facts developed in the phases of a search, and analyze such data for the purposes of: assisting law enforcement in their current investigations of missing and exploited children, developing prevention programs and increasing understanding of the nature and extent of the problem; and share the data and analysis on a regular basis with the National Center for Missing and Exploited Children

- Disseminate a directory of resources to assist in the locating of missing children
- Cooperate with public and private schools and organizations to develop education and prevention programs concerning child safety for communities, parents and children
- Provide assistance in returning recovered children who are located out of state
- Arrange for the development of a curriculum for the training of law enforcement personnel investigating cases involving missing and exploited children
- Assist federal, state and local agencies in the investigation of cases involving missing and exploited children
- Utilize available resources to duplicate photographs and posters of children reported as missing by police and with the consent of parents, guardians or others legally responsible, disseminate this information throughout the state
- Disseminate, on a regular basis, a bulletin containing information on children in the missing children's register to the state education department which shall then forward such bulletin to every public and private school where parents, guardians or others legally responsible for such children have given consent
- Operate a toll-free twenty-four hour hotline for the public to use to relay information concerning missing children
- Submit an annual report to the governor and legislature regarding the activities of the clearinghouse including statistical information
- Take such other steps as necessary to assist in education, prevention, service provision and investigation of cases involving missing and exploited children

The New York State Missing and Exploited Children Clearinghouse helped establish the Northeast States Coalition on missing and exploited children. The coalition is comprised of representatives of State missing children programs in New York, New Jersey, Massachusetts, Connecticut, New Hampshire, Maine, Vermont and Rhode Island and meets regularly to share information, initiate multi-state training programs, promote networking among case investigators, and coordinate responses to interstate issues.

The Missing and Exploited Children Clearinghouse has been designated as the central contact agency in New York State for missing children cases involving the Hague Convention Treaty on the Civil Aspects of International Child Abduction.

## **THE NEW YORK STATE MISSING AND EXPLOITED CHILDREN CLEARINGHOUSE**

The New York State Division of Criminal Justice Services (DCJS) Missing and Exploited Children Clearinghouse (MECC) serves as the state's resource center for information on cases involving missing and exploited children. Since the creation of the NYS Missing Children Register and the establishment of the Missing and Exploited Children Clearinghouse, DCJS has provided assistance in thousands of cases involving child abduction and victimization. The MECC plans and implements programs to ensure the most effective use of federal, state and local resources in the investigation of missing children and expands the State's efforts in the publicity, identification and recovery of missing children. Toward this end, staff of the MECC provide:

### **\* A 24-Hour, Toll-Free Hotline**

The MECC Hotline operates 24 hours a day, 7 days a week and receives calls from the United States, Canada, Mexico and Puerto Rico. All daytime calls - whether to report a missing child, the sighting of a missing child, or request information and assistance - are recorded.

### **\* Leads/Sightings Dissemination**

Through its national toll-free Hotline the MECC receives leads/sightings on missing and/or exploited child cases that are **immediately** forwarded to the investigating law enforcement agencies. MECC staff has received training from law enforcement agencies on obtaining critical information from Hotline callers.

### **\* Technical Case Assistance**

Through its staff of case coordinators, the MECC works directly with parents and law enforcement offering technical assistance, resources, information dissemination, and advice. In cases where law enforcement need resources in another city, county, state, or country, the MECC can assist through its contacts within other state missing children clearinghouses, the National Center for Missing and Exploited Children (NCMEC), the U.S. Department of State, Royal Canadian Mounted Police, U.S. Secret Service, U.S. and Canadian Customs, U.S. Immigration and Naturalization Service, FBI Child Abduction and Serial Killer Unit, and INTERPOL. MECC staff provides assistance to law enforcement in the interpreting, coding and entry of medical and dental data on their missing person cases. The MECC also provides assistance in the return of recovered missing children to their normal and ordinary place of residence.



### **\* Photograph and Poster Preparation and Distribution**

Fliers and posters of missing children are produced quickly and disseminated nationwide through a network of private sector partners, state agencies, NCMEC, and other state clearinghouses. The MECC has the capability to fax high quality photos of missing children throughout the state, and through its partnership with NCMEC, it has access to the "Parafax" program in which photos and information may be sent to over 6,000 law enforcement agencies throughout the nation. Furthermore, DCJS recently developed a home page on the Internet and the MECC now displays photos and information on missing children on this site. The address is: <http://criminaljustice.state.ny.us>

### **\* Database Searches**

Through its various database searches, the MECC can search active missing person cases based on any of a series of identifiers that may aid law enforcement in their investigation of missing person or unidentified person cases. Furthermore, utilizing the data on the Missing Children Register, the DCJS Bureau of Statistical Services produces annual reports on the scope of the problem in New York State. The MECC also has access to a number of informational databases such as the Federal Parent Locator Service (FPLS), nationwide telephone listings, credit bureaus, employment and property records, surname listings, and school registration.

### **\* Educational Materials and Publications**

In conjunction with the State of New York Police Juvenile Officers Association (SNYPJOA) and the DCJS Bureau for Municipal Police (BMP), the MECC has helped develop training programs for law enforcement. MECC and NCMEC child safety and crime prevention publications are also made available to parents, law enforcement agencies, schools and civic groups at no cost.

### **\* International Child Abduction**

The MECC is New York State's central contact agency for cases involving international child abduction. It is responsible for the enforcement of an international treaty entitled the "Hague Treaty on the Civil Aspects of International Child Abduction", and works to return these abducted children to their country of origin.

### **\* Legislation**

The MECC regularly provides information and advice to the Governor's Office and the Legislature regarding the creation or modification of laws that relate to the issue of missing and exploited children.

District Attorney Investigators:  
Selected Good Practices of the Child Abduction Unit,  
Kern County District Attorney's Office

“The Child Abduction Unit of the Kern County District Attorney’s Office exists to help parents recover children who have been abducted, to prosecute those who violate criminal laws related to child abduction, and to represent the Superior Court ... when the Court orders the District Attorney to locate and recover missing children.”

NOTICE, Kern Country District Attorney’s Office

- ◆ Have an agency protocol for handling family abduction cases.
- ◆ Quick response by law enforcement to family abductions may lead to early intervention and return of the child.
- ◆ Criminal warrants may be needed if the Hague Convention remedy fails or is unavailable.
- ◆ Law enforcement recovery of abducted children has numerous advantages over self-help recovery by the parent.

Background

California is the only state that currently gives district attorneys and their investigators civil as well as criminal legal tools to locate and return abducted children. Prosecutors have the option of using the most appropriate remedy -- be it civil or criminal, or a combination of the two -- to locate and recover an abducted child. Once the child is returned to the jurisdiction, the courts can sort out the underlying custody and visitation issues. Investigators working in concert with prosecutors perform the indispensable leg work searching for abducted children, and then taking necessary steps to bring the child back to the jurisdiction. Many district attorney’s offices in California have established child abduction units to implement the law. Statewide meetings of the criminal justice system professionals assigned to handle child abduction cases are held to refine and improve practice.

In effect for about two decades, California’s innovative approach to custodial interference and abduction cases is on the verge of being more widely implemented. The Uniform Child Custody Jurisdiction and Enforcement Act, approved in July 1997 by the National Conference of Commissioners on Uniform State Laws, includes several sections modeled on California law that will give prosecutors and law enforcement in states that adopt the Act new flexibility and additional tools to help find and recover abducted children.

## Child Abduction Unit, Kern County District Attorney's Office

Dave Peery is a District Attorney Investigator in the Child Abduction Unit of the Kern County District Attorney's Office in Bakersfield, California. He is Chairman of the California Child Abduction Committee. The select good practices summarized below were identified by Mr. Peery in a telephone interview with Patricia Hoff and in comprehensive materials he developed for training law enforcement on effective responses in abduction cases in conjunction with OJJDP's *Responding to Missing and Abducted Children* (REMAC) educational initiative.

### **Have an agency protocol for handling family abduction cases.**

Every law enforcement agency should have an agency protocol/Standard Operating Procedure for handling family abduction cases. One purpose of a protocol is to ensure that the agency provides consistent, equal and fair treatment to all victims. With the help of the district attorney's office, a parent's lack of money and resources should not hinder their ability to search.

The protocol should cover how a family abduction case is handled from the first call to the recovery. All levels of the law enforcement agency should be prepared to respond uniformly to inquiries. A missing persons report on the child and abductor should be taken at once and immediately entered into the NCIC. This must be done even if the abductor has not been charged with a crime. The office should develop a specific Missing Persons Report for family abduction cases. Contacting the state missing children's clearinghouse may also be required. Coordinate with NCMEC. Certified copies of all custody orders should be obtained. Get current photos of the abducted child. Ascertain whether other crimes were committed that might be charged, such as burglary, domestic violence, child abuse, battery. If the case cannot be worked, it should be documented and referred.

The protocol should cover how law enforcement should deal with the family. Officers should discuss what the family can do for the case, *e.g.*, be ready to make calls, assemble documents (birth certificates, photos, custody orders); remain calm and "think before acting;" call friends and relatives. If state law allows, the investigator may provide the left-behind parent with a tape recorder to tape phone calls from the abductor. (This is lawful in California when there is an ongoing criminal investigation.) This may help prove the intent element of an offense, and show that the child was transported out of state. The protocol should also address how to prepare parents for reunification with their abducted children.

**Quick response by law enforcement to family abductions may lead to early intervention and return of the child.**

Whether or not a formal protocol exists for handling family abduction cases, law enforcement officers must recognize the special features of these cases. "An effective investigation requires commitment, time, and resources." Prompt response by law enforcement to family abduction cases may help recover the child sooner. This is good for the child and family. It is also good for law enforcement because it removes a possible source of tension with the left-behind parent. Officers should be aware that failure to properly investigate a case may lead to civil liability.

**Criminal warrants may be needed if the Hague Convention remedy fails or is unavailable.**

When a child is abducted from California to another country, the first thing the criminal investigator will ascertain is whether the country is a party to the Hague Child Abduction Convention. If so, the parent should pursue that civil remedy for return of the child. The role of the district attorney's office is not necessarily over when a child is taken to a Hague Convention country, however. If the Hague remedy fails, or if the child has been abducted to a country which is not a party to the Hague Convention, pursuit of criminal charges may be imperative. For example, if a country has a poor track record of returning children to the U.S. under the Convention, going for a felony warrant and seeking mutual assistance from law enforcement counterparts in the other country may be the only effective and lawful way to recover the child.

If the Hague remedy fails or is not available, law enforcement can:

- obtain a felony warrant for the abduction and other offenses committed during the course of the abduction that may be covered by the relevant extradition treaty;
- request issuance of a federal warrant for Unlawful Flight to Avoid Prosecution (UFAP);
- coordinate with U.S. Attorney's office for federal charges under the International Parental Kidnapping Crime Act;
- seek revocation of passports, and consider deportation of undocumented aliens;
- seek extradition where treaty allows;
- request mutual assistance from law enforcement in the country to which the child has been abducted;
- coordinate with State Department, NCMEC and INTERPOL;
- hire a private attorney in the other country for help in securing the child's return.

Thus far, California has been disappointed with Mexico as a Hague Convention partner. For the 1,000 cases of children abducted from California to Mexico, Dave Peery knows of only one -- from Ventura County -- that resulted in the child being returned under the Convention. The California Attorney General's Office, through Deputy Attorney General Raquel Gonzalez' efforts, is seeking to ameliorate the situation with Mexico (See pages 4-36 to 4-44).

In the face of such poor statistics, criminal warrants are being issued for the arrest of the abducting parent. This works if the abducted children are American and passports can be obtained for their return to the U.S. The abducting parent, if arrested in the U.S., may readily agree to return the child rather than face possible incarceration in a California prison. Alternatively, the California District Attorney will hire an attorney in Mexico to do whatever is needed to get the children returned. The cost of hiring the attorney is reimbursable to the D.A.'s office through state funds. (If the UCCJEA is widely adopted, a network of criminal investigators and prosecutors will be available to help enforce custody/visitation orders within the United States. Eventually, this could obviate the expense of retaining lawyers in sister states.)

**Law enforcement recovery of abducted children has numerous advantages over self-help recovery by a parent.**

There are two types of recovery in a family abduction case: law enforcement and parental. Law enforcement recovery avoids the risks associated with self-help recovery by a parent.

Self-help recovery may be risky if the parent who goes to recover his/her child violates the law in the process. Instead of returning with the child, the parent may be arrested and incarcerated for assault, disturbing the peace, etc. In an international abduction case, the potential for the left-behind parent to end up in a foreign jail cautions against self-help recovery. Parental recovery can also be dangerous for the child or one or both of the adults. This could happen if the left-behind parent is abusive and might harm the child or the abducting parent, or if the abducting parent is violent toward the left-behind parent.

Law enforcement recovery reduces the potential for harm. If there is a risk of endangerment to the child, the child can be placed with child protective services rather than immediately returned to the left-behind parent. The two parents do not come into direct contact, thus avoiding possible violence between them. If present at the arrest, law enforcement officers can gather useful evidence needed by the prosecutor to prepare the case. This might include evidence establishing that the child was in the suspect's possession and what the living conditions were. Law enforcement can take statements by the suspect and the child, as well as interview witnesses at the suspect's location. Importantly, law enforcement, if properly trained, can ease the reunification between the child and the searching parent.

When the child is located in another state or country, the California D.A. Investigator coordinates the arrest and recovery of the child with their local counterparts.

In preparation for recovering an abducted child from another state or country, the District Attorney gets a court order pursuant to California Family Code Sections 3130 and 3131 ordering the D.A., *inter alia*, to take physical custody of the child. In addition, the investigator may get a notarized letter from the custodial parent allowing the child to travel back to California with the investigator. These documents, along with a copy of the custody order, a declaration setting forth the investigative history of the case, and a petition signed by the victim parent documenting the abduction and aftermath, are all sent to the law enforcement officer in the other state or country in advance of the pick up of the child. If the child is in another state, the D.A. Investigator will register the order with the local court in accordance with the UCCJA. The D.A. Investigator travels to the foreign country or sister state, sometimes with the left-behind parent, to recover the child.

Dave Peery recommends using a checklist for recovery of children to make sure everything is in order. Copies of two such checklists are provided as Attachments C and D.

**CHECKLIST FOR RECOVERY OF CHILDREN**

1. **CONTACT OTHER JURISDICTION  
OFFICER \_\_\_\_\_ PHONE \_\_\_\_\_**
2. **REQUIREMENTS FOR TAKING THE CHILD INTO CUSTODY**
3. **WILL THEY PICK UP CHILD IF THERE IS NO WARRANT OF ARREST  
FOR THE ABDUCTING PARENT**
4. **WILL THEY PLACE THE CHILD IN PROTECTIVE CUSTODY UNTIL  
YOU/OR VICTIM CAN TRAVEL TO THEIR JURISDICTION TO  
RECOVER THE CHILD**
5. **WHO WILL COORDINATE THE RECOVERY  
OFFICER \_\_\_\_\_ PHONE \_\_\_\_\_**
6. **WILL THE CHILD BE RELEASED TO YOU/OR VICTIM? WHAT  
DOCUMENTS DO YOU/OR VICTIM NEED TO PROVIDE AT THE TIME  
OF PICK-UP**
7. **WILL A COURT HEARING BE REQUIRED**
8. **IS AN ATTORNEY NECESSARY**
9. **TAKE 3 CERTIFIED COPIES OF ALL COURT ORDERS**
10. **CERTIFIED, EXEMPLIFIED COPY OF BIRTH CERTIFICATE**
11. **VALID IDENTIFICATION OF PERSON PICKING UP CHILD**

**CHECKLIST FOR LAW ENFORCEMENT ON  
RECOVERY OF CHILDREN****DO, IN ORDER LISTED:**

- \_\_\_ 3 Certified, Exemplified copies of all court orders
- \_\_\_ 3 Certified, Exemplified copies of Orders or 3 notarized authorizations from the custodial parent
- \_\_\_ Contact in police dept./sheriff's office in other state  
\_\_\_\_\_ phone \_\_\_\_\_
- \_\_\_ District Attorney/private attorney in other state  
\_\_\_\_\_ phone \_\_\_\_\_
- \_\_\_ Need to estimate expenses
- \_\_\_ Make flight arrangements
- \_\_\_ Book hotel room, Confirmation No. \_\_\_\_\_
- \_\_\_ Call local car rental and reserve specific car  
Confirmation No. \_\_\_\_\_
- \_\_\_ Teletype or call other agency with your travel plans
- \_\_\_ Take maps and your case file
- \_\_\_ Other states' U.C.C.J.A.
- \_\_\_ Take NCIC entries
- \_\_\_ Take items for child (diapers, toys, books)
- \_\_\_ Recommend carry-ons for the plane - check weather
- \_\_\_ Give yourself at least 1 hour prior to departure. Check with the Airport police re: parking. They will probably validate in advance and advise as to where to park
- \_\_\_ Get pre-assigned seats going and coming
- \_\_\_ Check in with the other agency after you arrive
- \_\_\_ Interview arresting/recovering officers, and obtain any reports
- \_\_\_ Allow 2 hours to pick up the child
- \_\_\_ Allow 2 hours check in time for the return trip
- \_\_\_ Return rental car
- \_\_\_ Fill out Shelter form on return trip if necessary, interview child/ren
- \_\_\_ Transport child to victim/office/shelter
- \_\_\_ You'll need to give Shelter a certified copy of the order



District Attorney's Offices:  
The Deputy DA and the DA Investigator,  
Selected Good Practices of Santa Clara County

“ Child abduction cases are different from ordinary criminal cases because of the ongoing familial relationship. Children need a relationship with both parents. We have many tools at our disposal in deciding how to proceed. As prosecutors, we must look at the welfare of the children and ask: ‘How do we serve their best interests?’ ”

Janet Heim  
Deputy District Attorney, Santa Clara County, CA  
Parental Kidnapping Investigation Unit

“Location and a speedy safe recovery of the child are the investigator’s main concerns. But while doing this, the investigator and deputy district attorney need to work closely together to best accomplish those goals.”

Melanie Headrick  
Criminal Investigator II  
Team Leader  
Santa Clara Country District Attorney’s Office

- ◆ It is very important for the prosecuting attorney and the investigator to strategize on child abduction cases.
- ◆ Time is of the essence in abduction cases: law enforcement should act immediately to prevent removal of the child from the country and should utilize all available government resources toward that end.
- ◆ Parents can help prevent and resolve abduction cases by (1) obtaining specific preventive measures in their custody orders; (2) keeping a certified copy of the custody order with them at all times; (3) keeping information about the child and other parent as well as a certified copy of the court order in a safe place; and (4) flagging passports.
- ◆ U.S. and foreign consulates may be of assistance to the investigator when a child has been abducted abroad or there is reason to fear an abduction will occur.
- ◆ Law enforcement, judges, members of the bar and the public need to be educated about parental kidnapping.

## Background

California is the only state that currently gives district attorneys and their investigators civil as well as criminal legal tools to locate and return abducted children.

Janet Heim is a Deputy District Attorney in the Parental Kidnapping Investigation Unit of the Office of the District Attorney in Santa Clara County, California. She works closely with Melanie Headrick, Criminal Investigator II, Team Leader, also of the Santa Clara County District Attorney's Office, on interstate and international child abduction cases. (Ms. Headrick and Mr. Dave Peery perform similar roles in their respective District Attorney's offices. See previous section.) Ms. Heim, Ms. Headrick and Mr. Peery frequently lecture on the subject of investigating and prosecuting parental kidnapping cases. The select good practices summarized below were identified by Deputy District Attorney Heim and Investigator Headrick in a telephone interview with Patricia Hoff.

### **It is very important for the prosecuting attorney and the investigator to strategize on child abduction cases.**

"There is a real symbiotic relationship between the investigator and the attorney," Deputy D.A. Heim explained. Coordination and communication between the DA and the Investigator makes the case work most smoothly.

### *Case philosophy*

The investigator and the prosecuting attorney need to strategize on parental kidnapping cases on a case-by-case basis. The two professionals have different points of view. A decision must be made about what the focus is going to be. Will it strictly be prosecution? Or is the main goal to try to recover the child, even if this means not prosecuting the abductor? The DA should leave a little leeway to try to resolve the case. Once a decision is made, then the investigator and the prosecuting attorney must keep the goal in mind.

Investigator Headrick stresses that law enforcement officers new to abduction cases need to realize that arrest of the subject does not necessarily mean recovery of the child. An abducting parent may be arrested and extradited, but this process does not guarantee the child's return.

### *Mutual assistance*

The D.A. needs to know what is going on in the investigation in order to know how to handle the case. If the investigator knows what the attorney is looking for, then she can look for that information. According to Investigator Headrick, "Location and safe recovery are the investigator's main concerns. But while doing this, the investigator needs to anticipate the D.A.s needs as well as communicate with the D.A."

As a practical matter, the investigator must be familiar with the criminal statutes. Ms. Headrick uses the mitigating and aggravating factors in California's criminal parental abduction statutes to help guide evidence gathering. "Look under the surface. Check the family law case -- there's a lot of information in those files." As evidence is adduced, the investigator alerts the prosecuting attorney to potential charges and defenses.

The prosecuting attorney can help the investigator with civil issues that arise, including how to read and interpret custody orders, and how to avoid civil liability.

**Time is of the essence in abduction cases: law enforcement should act immediately to prevent removal of the child from the country and should utilize government resources toward that end.**

When law enforcement is informed of an abduction in progress, time is of the essence. The goal is to catch the abductor in the act - before he or she leaves the state or country with the child. If an emergency exists, parents of abducted children should call '911' immediately to report the abduction. This increases the chances of intercepting the perpetrator within the United States.

Law enforcement responding to the alleged abduction need to react immediately. When the abduction is likely to be to a foreign country, law enforcement should consider asking the U.S. Federal Bureau of Investigation, The Immigration and Naturalization Service and the Customs Service for assistance. Information should be available to local law enforcement officers in connection with a criminal investigation.

**Parents can help prevent and resolve abduction cases by (1) requesting preventive measures in their custody orders; (2) keeping a certified copy of the custody order with them at all times; (3) keeping information about the other parent and child(ren) in a safe place including, a certified copy of the latest court order; and (4) flagging passports.**

### *Preventive measures in custody orders*

Parents should seek preventive measures in the custody order to deter an abduction. Examples include bonds, orders to surrender passports, supervised visitation, and reminders that violations of the order may subject the violator to civil and/or criminal consequences.

Parents who can afford to hire an attorney to represent them should look for one with experience handling parental kidnapping cases. Many parents represent themselves because of financial constraints. Some courts have videos that explain to these pro se litigants how to fill out the legal papers needed to secure a divorce. Investigator Headrick recommends that court-based videos-- and brochures -- should include information on abduction prevention as well as on the criminal consequences of violating an order. If the court does not already offer a video or brochure, then projects should be initiated to produce them. Judges should be involved in creating these informative materials to increase their familiarity with the issues.

Parents may be advised to get free copies of booklets on prevention available from the State Department, NCMEC, Vanished Children's Alliance and the ABA Center on Children and the Law. Parents should share these publications with their lawyers to ensure that all appropriate precautions are sought.

### *Have a certified copy of the custody order at all times*

Parents should always have a certified copy of their custody order with them. Law enforcement officers responding to an abduction or threatened abduction are much more willing to intervene if the parent has a certified copy of the custody order. A child can be abducted at any time, be it in a supermarket, at school, or from the babysitter's. Not only should the parent carry a copy of the order, but a certified copy should be given to the school, babysitter, etc.

### *Keep information about the other parent in a safe place*

The DA's office advises parents who fear abductions to assemble identifying information and documents about the child and other parent, including a certified copy of the custody order, photographs of the child and other parent, address information about the other parent and his/her relatives, including those overseas; birth dates, Social Security Numbers, and Passport Numbers for passports issued by the U.S. and other countries. This information should be kept in a safe place beyond the reach of the other parent, such as a relative's house or a safe deposit box not accessible by the other parent. Investigator Headrick considers the safekeeping of identifying information critical because "some abductors steal all vital documents" to obstruct the left-behind parent's search for the child.

### *Flag passports*

Parents who fear an international abduction should contact the U.S. Passport Office to prevent the other parent from obtaining a passport for the child(ren). The parent seeking to block issuance of a passport must furnish a copy of a custody order that prohibits removal of the child from the U.S.

### **U.S. and foreign consulates may be of assistance to the DA investigator when a child has been abducted abroad or there is reason to fear an abduction will occur.**

When a child is abducted from the U.S. and taken to a country that is a party to the Hague Child Abduction Convention, the criminal investigator and prosecuting attorney may solicit help from either the U.S. Central Authority or the Central Authority in the country to which the child was taken or retained. When a child is abducted from a Hague country to California, the D.A.'s office may be asked by the U.S. Central Authority (or NCMEC) to help locate the child and commence a Hague return proceeding.

However, the Hague remedy is not meant to be the exclusive remedy in incoming or outgoing international abduction cases. Consequently, the D.A.'s office may forego the assistance of the Central Authority and instead approach the case as if it were to a non-Hague country. Potentially good sources of help are the U.S. consulate in the foreign country, the foreign consulate in this country, and possibly from other offices within the Department of State that handle emergency services abroad. A "welfare and whereabouts" request may be made to the U.S. consulate in another country if the child is a U.S. citizen, to determine the well-being of the child.

Foreign law enforcement counterparts also may be called upon for assistance in recovering an abducted child. In addition, the D.A.'s office is aware that almost every country has civil process that may be invoked. The left-behind parent in the U.S. may retain counsel to use local process to help recover the child.

If the parent likely to commit an abduction is a dual national, the American parent can contact the Consulate of the abductor's country for possible assistance or information.

In incoming Hague cases, it may be more effective to register a foreign custody order and then seeks its enforcement in state court under the UCCJA rather than invoking the Hague Convention remedy.

**Judges need to be educated about parental kidnapping.**

For most judges parental kidnappings are a very small percentage of the total caseload. As a result, many judges tend not to take abduction threats seriously, and are not prepared to recognize threats that amount to real possibilities of abduction. They need to develop a special alertness so that real possibilities of abduction are not ignored and appropriate safeguards are included in the court order.

Prosecutors and criminal investigators should actively develop a relationship with judges who handle child abduction cases.

District Attorney's Office and State Attorney General's Office:  
Selected Good Practices from San Diego

- ◆ Streamline the Hague application process.
- ◆ Involve country experts on staff.
- ◆ Arrange for immediate hearing in Hague and custody cases.
- ◆ Create opportunities for cross-cultural judicial communication and training.

Background

California is currently the only state in which the state criminal justice system plays a critical role in using civil remedies to resolve parental abduction cases. Previously we described the role of the district attorney's investigator in Kern County and the collaborative relationship between the investigator and Deputy D.A. in Santa Clara County, California. Involvement in civil aspects of parental abduction also extends to the State Attorney General's Office. Deputy Attorneys General serve as state contacts for Hague Convention cases. In this segment, we describe the operations of another D.A.'s office and its collaboration with the California State Attorney General's Office as well as the local family court.

Due to San Diego's border with Mexico, abductions and retentions by parents to and from Mexico are not uncommon. The San Diego District Attorney's office estimates that ten percent of their parental abduction cases involve children taken to or from Mexico. Mexico became a party to the Hague Convention on October 1, 1991. Mexico's judicial system operates quite differently than that of the United States. The San Diego offices of the District Attorney and the Attorney General have taken a pro-active stance in cases with Mexico.

The California Attorney General's Office acts as a local "central authority" for Hague cases involving abducted children located in California. The Attorney General's Office receives the Hague applications from the National Center for Missing and Exploited Children (NCMEC) and reviews them to determine whether they are appropriate for handling by the District Attorney. The Attorney General's Office routes the Hague application to the District Attorney's Office in the county where the child is believed to be located. The Attorney General's Office tracks the progress of the Hague case, advises District Attorney staff on specific issues related to Hague cases, and serves as liaison with the United States Department of State, NCMEC and/or the foreign central authority.

Raquel Gonzalez is a Supervising Deputy Attorney General at the California State Attorney General's office in San Diego and is the Statewide Coordinator for Hague matters. She works closely with Garry Haehnle, Deputy District Attorney, who heads the Child Abduction Unit of the San Diego District Attorney's Office. Juan Jose Briones, who is an attorney from Mexico, is a member of the Mexican Liaison staff in the San Diego District Attorney's Office. He maintains frequent contact with Mexican law enforcement officials and serves as a valuable source of information on Mexican law and procedures. (The information provided here was gathered by Linda Girdner from these individuals as well as Sally Penso, who previously headed the Child Abduction Unit).

### **Streamline the Hague application process.**

The District Attorney's office has bilingual staff that prepares the Hague applications for cases of children abducted from San Diego County to Mexico. The applications are provided in English and in Spanish. All orders and other documents are organized with tabs in two binders, one containing the documents in English and the other compiling their Spanish translations, both binders arranging the documents in the same order. The first document in order is a cover letter signed by the District Attorney, addressed to the Mexican Central Authority, requesting its assistance in pursuing the return of the child under the Hague Convention. A number/letter is assigned to each document so that, for example, the cover letter is identified as "A" in both its English and Spanish versions. Each document is then separated by a divider/tab bearing the number or letter designation for the document. A Table of Contents listing each document and its number/letter designation is placed at the very top of the documents. Of course, the Table of Contents is also translated and placed in the Spanish binder.

This format keeps the Hague application and supporting documents, including court orders well organized. It also minimizes the risk of documents being lost or misplaced, and allows for easy access to each document in its English and Spanish version. At least four sets of binders (each set consisting of an English binder and a Spanish binder) should be prepared: two sets for the Mexican Central Authority, one set for the United States Central Authority (the U.S. Department of State), and one set for the district attorney's files.

The Attorney General's Office keeps samples of these binders on file and makes them available to deputy district attorneys throughout California upon request.

This attention to detail, organization, language, and presentation could serve as a model for all Hague applications. The already beleaguered left-behind parent is not burdened with obtaining costly translations and putting together the entire file. The foreign Central Authority can begin processing the application without the delays of needing to request missing application information or translations.



The District Attorney's office submits the Hague application directly to the Mexican Central Authority, bypassing the U.S. Central Authority. A courtesy copy of the entire Hague application package is provided to the United States Central Authority for Hague cases, the Office of Children's Issues, United States Department of State. An appropriate cover letter addressed to the United States Central Authority accompanies the courtesy copy. This allows the United States Central Authority to track the progress of the case and assist at some point, if necessary. It also helps the United States Central Authority keep accurate statistics on Hague applications and returns.

The San Diego District Attorney's Office stays in touch with the Mexican Central Authority directly about the case. With other countries, the San Diego District Attorney's office submits the application through the U.S. Central Authority.

In cases where a child is abducted from a Hague country to San Diego County, the application usually is submitted by the foreign Central Authority to the U.S. Central Authority. They forward the application to the Deputy Attorney General in California, who then forwards it to the San Diego County D.A.'s office.

With abductions from Mexico, however, sometimes an alternative procedure is used. The Mexican Consulate in San Diego submits the application directly to the San Diego D.A.'s office. The two offices communicate regularly about the progress and setbacks regarding both incoming and outgoing abduction cases between their two countries. By directly communicating with each other, they do not need to rely on the Central Authorities of each country each time they want to get an update on the cases.

### **Involve country experts on staff.**

The San Diego District Attorney's Office has taken a pro-active stance to learn about the Mexican criminal and civil justice systems regarding parental abduction. Individuals on the Mexican Liaison staff are particularly helpful in explaining the different laws, procedures, and agencies involved and acting as cultural broker between the office and Mexican agencies in specific cases.

Understanding the differences between legal systems is important in these cases. Although the Hague Convention is an international treaty, Hague proceedings go forward based on each country's system of civil procedure. Mexico has very different procedures than the U.S. For example, in Mexico, there is no special procedure or implementing legislation for Hague matters. Generally, the cases are handled within the existing procedures for family law matters. There is, however, pending legislation that would provide specific procedures to be used in Hague cases.

In many cases, especially where the abducted child is believed to be located in the Mexico City area ("Distrito Federal" or "D.F.") the Mexican Central Authority works directly with the judge. In others, the Mexican Central Authority forwards the case to the child protective authorities ("DIF"), who then work with the judge.

The Mexican family law judge presented with a Hague case may issue orders to local law enforcement officials to locate and pick up the child. Mexican State Attorneys General have signed agreements of cooperation, pledging to assist the Mexican Central Authority in Hague matters. (In Mexico, the state judicial police, as well as the local prosecutor, are under the command of the state attorney general's office in each state.)

The availability of an extraordinary writ known as "amparo" under Mexican law has posed an obstacle to the return of a child in several cases. This occurs when the abductor files an "amparo" proceeding in the federal Mexican court to challenge the constitutionality of the Hague Convention proceedings conducted in the Mexican family court. The effect of the "amparo" is to temporarily stay the Hague proceedings/orders until the federal case is resolved. This is a long process that has frustrated many returns.

#### **Arrange for immediate hearing in Hague and custody cases.**

The Deputy District Attorney understands the need for an expeditious hearing of the Hague case and the San Diego Family Court is responsive to this need. In cases where the child has been abducted from Mexico to San Diego County, the child is usually picked up with a court order. (See sample request and warrant provided as Attachments E and F.) At that time the parent is given a copy of the Hague application and the moving papers. The D.A. investigator tries to execute the court order early in the morning, before work or school, so that the child is brought to the court right away. The abducting parent is not forced to come, but often accepts a ride to court so as to accompany the child. The hearing on the return is held that same afternoon. The judge may postpone the hearing if it looks like it will take longer. Usually the left-behind parent remains in the other country and is not present at the hearing. The court then considers all the evidence.

Holding the hearing right away curtails the risk of the abducting parent fleeing again with the child. The judge will listen to the abducting parent's side of the story and may postpone the hearing if the abductor wants to retain an attorney and/or prepare a defense.

The point of the Hague Convention is to return the child to the country of habitual residence so that the proper court in that country can then hold a hearing to determine the custody of the child. However, orders for return under the Hague Convention do not guarantee that a custody hearing will be held. Central Authorities do not keep track as to how many returns have been followed by custody hearings. Some judges in the U.S. and elsewhere have expressed concerns that ordering returns to the country of habitual residence sometimes results in returning the child to a left-behind parent who has been accused of being abusive or neglectful. They may

realize that the abducting parent may not be able to afford pursuing the custody case back home, which would result in de facto custody to a left-behind parent who chose not to initiate the proceedings. Some jurisdictions, such as Great Britain, address this by the court issuing undertakings.

In Hague cases where the San Diego D.A. is pursuing the return of an abducted child to Mexico, if abuse allegations exist, they might arrange for the child to be transferred through a consular official to child protective services upon arrival in Mexico.

In Hague cases requesting the return of children to San Diego, the Deputy D.A. prepares a form with notice of a hearing or a mediation conference scheduled in San Diego on the merits of the custody issue. This is done to show the abducting parent and the court in the other country that there will be an opportunity to be heard on the merits. This expeditious process also shortens the time that a child may have to spend in CPS care after being returned. Cooperation with the San Diego Family Court is essential for making this process operate smoothly.

### **Create opportunities for cross-cultural judicial communication and training.**

The San Diego Family Court, the San Diego District Attorney's Office, and the California State Attorney General's Office have worked together to build bridges of communication across international boundaries. With the assistance of the Mexican Consulate in San Diego, they have organized meetings between San Diego family court judges and their counterparts from the Mexican state of Baja California. The first such regional meeting took place in 1994, the second in 1996, and the third in 1998.

This type of meeting has grown in the scope of the topics presented (see agenda provided as Attachment G), as well as in the number of participants. At the last meeting, held in January 1998, in addition to the judicial authorities, there were representatives of the U.S. Department of State, NCMEC, Child Abduction Units from nine Southern California District Attorney offices and the California Attorney General's Office. Child protection officials from both sides of the border were also present. Issues ranging from the basic principles of the Hague Convention to the methods used to locate the abductor-parent were discussed. This type of binational meeting, besides serving as an effective training tool, promotes judicial communication across the border and facilitates cooperation between the authorities that handle Hague matters on both sides of the border.

Attachment E

**IN THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Re:	}	Case No.
	}	
	}	
	}	<b>DECLARATION IN SUPPORT</b>
	}	<b>OF REQUEST FOR</b>
a minor,	}	<b>PROTECTIVE CUSTODY</b>
	}	<b>WARRANT</b>

I, \_\_\_\_\_, declare:

I am a Criminal Investigator employed by the Office of the District Attorney, County of San Diego, 330 West Broadway, San Diego, California 92101, and have been so employed as a California law enforcement officer for \_\_\_\_\_ years. I have worked for the District Attorney's Child Abduction Unit for \_\_\_\_\_ years and during that time have handled over \_\_\_\_\_ cases involving parental abductions. I was assigned to the above named case on \_\_\_\_\_.

Accordingly, I request a Protective Custody Warrant be issued for the minor child herein.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in San Diego, California on \_\_\_\_\_.



**AGENDA FOR THE THIRD BINATIONAL MEETING  
BETWEEN JUDGES AND AUTHORITIES FROM  
SOUTHERN CALIFORNIA AND BAJA CALIFORNIA ON CHILD  
ABDUCTION AND SUPPORT.**

JANUARY 31, 1998. TIJUANA, B.C.

- 9:00 hrs. Registration.**
- 9:25-9:30 Welcome.** Dr. Jorge Santibañez Romellon, Director of El Colegio de la Frontera Norte.
- 9:30-9:40 Welcome and Opening Remarks.** Luis Herrera-Lasso, Consul General of Mexico and Paul Pfingst, San Diego County District Attorney.
- 9:40-9:50 General Principles of The Hague Convention on Child Abduction According to United States Law.** Raquel Gonzalez and Elaine Tumonis, California Attorney General's Office.
- 9:50-10:00 1.- Specific Aspects of the Application of the Convention in Mexico.** Concepcion Galvez, Child Abduction Program Coordinator of the Secretary of Foreign Affairs.
- 2.- Application of the Convention by State DIF Offices and its role in Child Support.** Rosa Isela Guerrero Alba, Officer of the Secretary of Foreign Affairs.
- 10:00-10:20 The Hague Convention on the Civil Aspects of International Abduction. Law and Application in Mexico.** Lic. Andres Linares Carranza, District Attorney Coordinator on Family Matters.
- 10:20-10:30 Role of the U.S. Central Authority for the Application of the Convention.** Chris Lamora, U.S. Department of State and Nancy Hammer, National Center For Missing And Exploited Children, International Division.
- 10:30-10:50 Application of the Convention in Returns from Southern California According to U.S. Law.** Garry Haehnle, San Diego County Deputy District Attorney and Pam Grossman, Ventura County Deputy District Attorney.

- 10:50-11:00 Locating a Child.** Ed Sousek, San Diego County District Attorney's Office Investigator.
- 11:00-11:10 Consular Intervention in Cases of Return of Mexican Minors.** Adriana Gonzalez Felix and Barbara Strickland, Consulate General of Mexico.
- 11:10-11:30 Q & A**
- 11:30-11:45 Break**
- 11:45-12:00 Application of the Convention According to U.S. Law.** Judge Ashworth, California Superior Court.  
**a) Return of the Minor to the Country of Habitual Residence.**
- 12:00-12:15 1.- Application of the Convention According to Mexican Law.** Judge Dalila Villegas, First Family Judge, Tijuana, B.C.  
**a) Constitutional Hearing (Art. 14 mexican constitution).**  
**b) Exclusive Jurisdiction Over Custody of Minors to be Returned.**  
**c) Visitation Rights During the Return and the Denial of Return (Art. 7 and 21 of the Convention).**
- 12:15-12:30 The Amparo Writ and the Suspension of a Court Order to Return.** Maria Jesus Salcedo, Professor of Law at Autonomus University of Baja California, Law School.
- 12:30-13:15 Break-Lunch.**
- 13:15-13:45 Child Support.** Concepcion Galvez; Robert Lafer, Supervisor Attorney San Diego County D.A. Child Support Unit and Mary Jane Hamilton, California Attorney General's Office Child Support Unit.
- 13:45-14:00 Q & A**
- 14:00 Closure.** Luis Herrera-Lasso

## Lawyers:

### Selected Good Practices From Legal Experts

#### Background

As many parents of abducted children have discovered, very few lawyers in the United States have expertise in international child custody, visitation, and abduction cases involving Hague and non-Hague countries. Fortunately, this country's recognized legal experts in the field tend to generously share their knowledge with colleagues through continuing legal education programs, informal mentoring arrangements, and various publications. Practice tips for lawyers from four veteran international family lawyers follow.

1. **William M. Hilton**, Certified Family Law Specialist, Box 269, Santa Clara, CA 95052 (408)246-8511, <http://www.hiltonhouse.com>

- ◆ Lawyers and judges should take advantage of the extensive collection of materials about the Hague Child Abduction Convention and the Uniform Child Custody Jurisdiction Act/Parental Kidnapping Prevention Act on Mr. Hilton's Internet site: <http://www.hiltonhouse.com>. Case law from around the world, law review articles, statutes, and other information is updated frequently. All materials may be downloaded free of charge. You may send Mr. Hilton copies of decisions in your international/interstate custody cases for inclusion on the web site.
- ◆ In drafting an order for enforcement of custody and visitation, include provisions to deter international abductions, and to facilitate application for return or access under the Hague Child Abduction Convention should that become necessary. Four sample provisions, excerpted from an order Mr. Hilton uses in California, follow:
  - Any removal of the children from the United States in contravention of an order of the court or a written agreement of the parties shall be a "wrongful removal" within the meaning of Article 3 of the Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct. 1980 (Convention).
  - Any retention of the children outside of the United States in contravention of an order of the court or a written agreement of the parties shall be a "wrongful retention" within the meaning of Article 3 of the Convention.
  - The United States is the habitual residence of the children within the meaning of Article 3 of the Convention.



- Both parties are aware that the removal of the children from the United States, or the retention of the children who have been in the United States, with the intent to obstruct the lawful exercise of parental rights is a violation of 18 U.S.C. 1204, the “International Parental Kidnapping Crime Act of 1993.”
  - ◆ “Safe harbor” orders may be sought in the child’s country of habitual residence to give the requested court some assurance that the child will not be exposed to harmful conditions if the child is ordered returned. See Mr. Hilton’s “Safe harbor pleading” memorandum in Attachment H, which more fully explains what these orders do and how they may be crafted.
- 2. Robert D. Arenstein**, Attorney at Law, 295 Madison Avenue, New York, New York 10017, (212) 679-3999. The following practice tips are excerpted from a paper Mr. Arenstein wrote for the ABA’s North American Symposium on International Child Abduction (Washington, D.C., 1993), entitled “The Anatomy of A Hague Case When A Child[ren] Has Been Abducted to the United States.”
- ◆ During the initial telephone contact, the left-behind parent will generally relate to the attorney his or her version of the story of the abduction or retention. The attorney should then explain that parent’s options. These may include (1) trying to obtain a voluntary return, which can be negotiated by the Central Authority or an attorney; (2) trying to settle out of court, which is easier on the children and less expensive; or (3) filing a formal *Notice of Petition Under the Hague Convention and Petition for Return of Children to Petitioner Under the Hague Convention*.
  - ◆ The fax machine may be the lawyer’s best friend in a Hague case. One of the more useful provisions of ICARA can be found in Section 6 (42 U.S.C. 11605), whereby the rules of evidence are relaxed for Hague Convention cases. ICARA provides that documents need not be authenticated in order to be admitted into evidence in a Hague case. Due to distance problems and speed requirements in Hague Convention cases, the United States courts have permitted faxed documents with copies of signatures to be entered into evidence. The attorney may also fax his or her retainer agreement to the potential client and receive a signature within minutes. The client and the attorney can then make arrangements for the retainer fee to be deposited directly into the attorney’s trust account by wire deposit. Representation can then start within a short period of time.

**3. Gerald L. Nissenbaum, J.D., LL.M. (Tax),** Nissenbaum Law Offices, 88 Broad Street, Suite 400, Boston, Massachusetts 02110-3427, (617)542-2220. Mr. Nissenbaum is a past president of both the International and American Academies of Matrimonial Lawyers. The following tips are excerpted from a sample pleading Mr. Nissenbaum wrote for the Mock Trial at the ABA's North American Symposium on International Child Abduction (Washington, D.C. 1993), and from his booklet, *What To Do If You Are Concerned That Your Child Might Be Kidnapped*. Published in 1994 by the Missing and Exploited Children Comprehensive Action Program (M/CAP), this booklet is available from the National Center for Missing and Exploited Children and on line at <http://www.lawyersweekly.com> (click on Treasure Chest for "Legal Handbook on Kidnapping"). It is written as a practical guide for parents, but is an excellent resource for lawyers.

- ◆ In practice, the left-behind parent's presence at a Hague return proceeding, which should not be necessary, probably helps immensely in getting the judge to order the child returned. If your client is not going to be present when the child is brought into court, be prepared to tell the court what arrangements have been made to care for the child or to safely transport the child back to the country of habitual residence.
- ◆ Counsel the client to hand carry all of the photographs, affidavits, and other legal documents pertinent to the case. These valuable papers should not be put into a suitcase that could be lost as checked luggage.
- ◆ If you are not admitted in a court, do not presume to file a Hague petition there unless and until you are admitted, or simultaneously with a motion by a lawyer admitted to practice in that court which asks that you be admitted *pro hoc vice*. This motion should represent that local counsel will make sure that you comply with all local rules. Your attached affidavit should describe your education, training and experience (or attach a curriculum vitae), your willingness to comply with all local rules and assert that, because of your familiarity with this case and with area of specialized practice, the client would be irreparably harmed unless you were his or her counsel. Your local counsel should co-sign the complaint. Some jurisdictions require local counsel to be present at all court proceedings and to co-sign all pleadings.
- ◆ If it is likely that the judge will have little or no experience with the International Child Abduction Remedies Act (ICARA) and the Hague Convention on the Civil Aspects of International Child Abduction, you want him or her to have immediate access to this fundamental information. Attach copies of the Convention, relevant federal law and other relevant documents to the complaint.

**4. Patricia Apy**, Attorney at Law, Paras, Apy & Reiss, 241 Maple Avenue, Red Bank, New Jersey 07701-1727, (908)219-9000, e-mail: par@monmouth.com. Ms. Apy's memorandum, titled "International Litigation Strategies: Drafting Agreements for Enforcement," is the source of the first good practice described here. The second good practice relates to retainer agreements in Hague cases. A copy of Ms. Apy's retainer agreement for pro bono representation in Hague cases is found in Attachment I.

"While nothing in family law is cut in granite, I find that even in non-Hague cases if parents each have confidence that rights of access and custody will be respected, joint parenting, even across great distances, is workable."

- ◆ When representing a parent in the United States, the attorney must anticipate international enforcement issues, particularly when faced with the prospect of having to enforce the U.S. court order in a country that is not a party to the Hague Child Abduction Convention. One way to do this is by filing the initial pleading in the country that you believe will pose the most difficult problems for enforcement. By doing so and obtaining either an order for custody and access or incorporating an agreement into the form of a judgment, you effectively cut off the non-Hague country as a "safe haven" and ensure that rights of custody and access are protected in the environment identified as posing the highest risk.

If it is your eventual intention for the child to habitually reside in the United States with the protection of access rights to and from the non-Hague country, careful attention must be taken in the initial pleadings to ensure that the cause of action would be cognizable in the United States to protect against challenges on comity grounds. For example, the local attorney in the non-Hague country may advise that the most aggressive cause of action in a custody action taken by father against mother is to allege and prove that the mother has introduced a paramour into the home or prove that she has been conducting herself in an immodest way and that such proofs would be dispositive on custody. However tempting, applications for custody should allege 'best interest' issues which, while not culturally identical, reflect more objective and secular parenting concerns.

All correspondence, service, pleadings and process should be done in both English and the language of the other country. If official records of court proceedings are not provided as a matter of course, then confirming correspondence addressed to the adversary should document each appearance and its result. This will provide a record of "due process" having been afforded each litigant. Whether the case is resolved by litigation or settlement, such a record avoids future challenge.

Finally, consider that a non-Hague court may require a separate appended agreement should the intention of the parties be to register the agreement in the United States. This is particularly true of access agreements which require references to holidays celebrated in the United States which could not be included in an enforceable judgment in a Sharia (Islamic) court. For example, the form of judgment filed in the Islamic or Rabbinic court should refer to a “December school break” rather than Christmas. Make sure that both the agreement and its appendix reflect the same language, and confirm (line by line and in person, if possible) that the translations say exactly the same thing.

- ◆ In the course of processing incoming Hague Child Abduction Convention return applications, the National Center for Missing and Exploited Children frequently asks attorneys to represent foreign applicant-parents on a pro bono or reduced fee basis. Attorneys who take Hague cases should have retainer agreements specifically tailored to Hague litigation. Ms. Apy has developed a detailed retainer agreement for Hague cases, a copy of which is attached as Attachment D2. It makes clear that her time will not be charged to the client, but that attorneys fees will be sought from the respondent in accordance with the Convention and the International Child Abduction Remedies Act. Under the agreement, the client is responsible for any necessary and reasonable legal costs and expenses, for which a deposit of \$500 is required to cover disbursements.

The "Safe Harbor" Pleading

by

William M. Hilton, CFLS

Attorney At Law

Box 269

Santa Clara, CA 95052

TEL: (408) 246-8511 FAX: (408) 246-0114 MOD: (408) 246-0387

INTRODUCTION

There will be those times when one has a valid custody order from Forum One and it is to be enforced in Forum Two pursuant to the terms of the Uniform Child Custody Jurisdiction Act (UCCJA), 9 Uniform Laws Annotated (ULA) 15 when, say, the non-custodial parent has abducted the child from Forum One or the non-custodial parent holds the child over past the return date of a scheduled visitation.

There may also be those times when a Petition is filed in Forum Two under the terms of The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 (Convention) requesting the return of the child to Forum One.

In both of these instances the non custodial parent who has taken or retained the child in Forum Two may allege that returning the child to the parent in Forum One will cause severe and immediate physical or emotional harm to the child or otherwise place the child in an intolerable situation and therefore request that the court in Forum Two not honor the order from Forum One or find an exception to the return of the child under the Convention.

In the first instance, the request is usually made that the court in Forum Two take "Emergency Jurisdiction" pursuant to 9 ULA 3(a)(3) and issue orders under this section preventing the enforcement of the order from Forum One. FN<sup>1</sup>

In the case of the Convention, the parent in Forum Two usually alleges that one of the exceptions to the immediate return of the child will be found under Article 13, generally Article 13(b). FN<sup>2</sup>

The purpose of this sample pleading is to set up conditions whereby the child is returned to a "Safe Harbor" in Forum One such that none of the harmful conditions that have been alleged to exist in Forum One can, in any way, cause physical or emotional harm to the child.

The following Hypothetical illustrates the use of the "Safe Harbor" technique:

Enforcement of a valid order from Forum One is sought in Forum Two. The parent in Forum Two alleges that the parent in Forum One sexually molests the child. The court in Forum One then temporarily grants custody of the child to a third party, eg, grand parents, uncle, aunt, etc., or orders that the child be placed in a foster home in Forum One pending further order of the court. The court also makes orders prohibiting any contact of any kind between the child and the parent in Forum One.

When the above orders are in place, the possible danger to the child no longer exists and Forum Two will have no legal basis for not returning the child to Forum One, eg, the "Emergency" conditions alleged in Forum One no longer exist.

Set forth below are some suggested terms which may be used to accomplish this goal. Note that not all terms may apply to the particular case nor are these terms inclusive.

#### SAMPLE "SAFE HARBOR" TERMS

1. A valid order for the custody of the minor child of the parties was issued by this court on [date]. Pursuant to access (visitation) terms of this order the minor child was regularly sent to Forum Two.
2. The non custodial parent in Forum Two has objected to the return of the child to the custodial parent in Forum One by making allegations, which, if true, would seriously question the fitness of the custodial parent to have the care, custody and control of the minor child.
3. Without determining the validity of the said allegations and without any form of prejudice to the rights of the custodial parent and with the best interests of the minor child being paramount, and pending further order of the court, this court makes the following orders.

4. The order of [date] granting custody of the minor child to the custodial parent is stayed.
5. The temporary care, custody and control of the minor child is granted to [Name].
- 5A. [Alternate] The temporary care, custody and control of the minor child is granted to the non custodial parent on the condition that the non custodial parent and the child are to be present in the court in Forum One on [date]. Should the non custodial parent or the minor child not be present in court on [date], this order shall be revoked on that date and a party to be designated by the court shall be given the temporary care, custody and control of the minor child.
- 5B. [Alternate] The temporary care, custody and control of the minor child is granted to [Name of Child Protection Agency] in Forum One. A designated representative from [Name of Child Protection Agency] shall travel to Forum Two and escort the minor child back to Forum One. The minor child shall then be placed according to the usual procedure of the [Name of Child Protection Agency] pending a hearing on this matter.
- 5C. [Alternate] The temporary care, custody and control of the minor child is granted to [Name of Child Protection Agency] in Forum Two. A designated representative from [Name of Child Protection Agency in Forum Two] in Forum Two shall escort the minor child to Forum One where the child shall be turned over to the [Name of Child Protection Agency in Forum One]. The minor child shall then be placed according to the usual procedure of the [Name of Child Protection Agency in Forum One] pending a hearing on this matter.
6. The custodial parent shall not, in any way, contact the minor child or the non custodial parent and shall stay at least [distance] away from where ever the minor child or the non custodial parent may be.
7. All parties are enjoined and restrained from harassing, molesting or disturbing the peace of any other party or contacting any other party at their residence or place of employment.

8. The non custodial parent and the custodial parent shall advance sums, as determined by this court, to carry out the terms of this order. Such expenses may include, but are not limited to, the following. The court reserves jurisdiction to allocate ultimate payment of these costs amongst the parties.
  - 8.1 Travel costs from Forum Two to Forum One.
  - 8.2 Living expenses for any party in Forum One during the pendency of any hearing on the allegations made by the non custodial parent.
  - 8.3 Reasonable attorney fees and costs for any party.
  - 8.4 Reasonable mental health professional fees and costs.
  - 8.5 Costs of transporting the minor child from Forum Two to Forum One by a third party appointed by the court.
  - 8.6 Any other costs and fees that are necessary to cause the implementation of this order.
9. This court shall hold its first hearing on the allegations raised by the non custodial parent on [date].
10. A certified copy of this order shall be filed with the appropriate court in Forum Two.

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1. See file EMERGENCY.STD for a sample pleading under the Emergency Jurisdiction section of the UCCJA, including limitations on its use.
  2. 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.



Attachment I

January 7, 1998

Mr. \_\_\_\_\_

Re:

Dear Mr. \_\_\_\_\_:

I appreciate your contacting our office in the above captioned matter. I acknowledge receipt of the materials submitted to me by the National Center for Missing and Exploited Children. The Court Rules of the State of New Jersey, United States of America require, with respect to representation in any family court matter, that a retainer agreement be drafted which accurately reflects and predicts that type of service to be rendered and an approximation of any costs involved.

1. Based on the facts disclosed to us, and our continued factual investigation, there are, among other, the following issues to be negotiated for solution or litigated:

- a) Your application under the Hague Convention on Civil Aspects of Child Abduction for the immediate return of your child;
- b) The compensation to you of any costs, including travel, to effectuate your child's return pursuant to the International Child Abduction Remedies Act;
- c) Request for assessment of counsel fees by the abducting parent under I.C.A.R.A.

2. In connection with the services to be performed, it is always difficult and impossible to specify the exact nature, extent and difficulty of the contemplated services and attorney's time involved. Child custody litigation is the most labor intensive of all Family Court matters and international cases are particularly so. We shall exert effort at all times to represent your interest and rights and to provide our services in the most expeditious way.

Mr. \_\_\_\_\_

January 7, 1998

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3. In connection with the services rendered or to be rendered because in this matter we have been appointed through the National Center for Missing and Exploited Children, we will be honoring your qualification by French authorities for legal aid. However, we will continue to record our time and we will seek the payment of counsel fees under Federal and state law through the International Child Abduction Remedies Act and New Jersey law from the defendant/mother. For legal services, we shall be billing our time in a minimum of six (6) minute increments at the following rates:

Patricia E. Apy, Esq.	\$300.00 per hour
Peter C. Paras, Esq.	\$275.00 per hour
Bonnie M. S. Reiss, Esq.	\$275.00 per hour
Christine C. Cockerill, Esq.	\$175.00 per hour
Scott B. Engleman	\$125.00 per hour
Paralegal	\$ 75.00 per hour.

The hourly rates for this firm may be changed in the future. Hourly office charges will include all legal research, drafts of pleadings, conferences, telephone conversation, preparation for and appearances in Court and other tasks necessary to handle your case. Again, you will receive a statement, but payment will be sought exclusively from the respondent.

4. While we will not charge you for legal services, you will continue to be responsible for any necessary and reasonable legal costs and expenses incurred or paid out in the performance of my services. These costs and expenses shall include by specification:

filing fees, subpoena costs, deposition costs, translation services,  
fees of process servers, toll charges, local travel expenses and any  
other necessary expenses.

If we advance any costs or expenses, you shall forthwith reimburse us upon our furnishing to you information as to the amount, unless that amount can be charged against any amount held in trust. Because we anticipate a filing fee, some subpoena costs and potential translation services, we will require a deposit of \$500.00 (U.S.) to cover our disbursements. We will provide you with a statement of actual disbursements and we will seek reimbursement from the defendant/mother.

5. While I do not see the necessity in this case, during the course of Family Court matters, it is sometimes necessary to hire experts to assist you. You should be aware that we may recommend certain experts, but the ultimate determination to hire will rest with you. The fees payable to any experts hired shall be paid directly by you and shall not be advanced from monies paid by you to us in accordance with this retainer letter unless otherwise agreed upon.

Mr. \_\_\_\_\_

January 7, 1998

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6. In the event we receive payment of all or a portion of our fee and costs from the defendant/mother, either by way of court order or settlement, you hereby acknowledge that we may seek this recovery on your behalf and you consent to our applying that recovery to legal fees accrued.

Billings and accountings for our services and costs will be submitted to you only for report keeping purposes. Statements for any disbursements may be payable upon receipt unless otherwise agreed upon.

In representing you in this matter, we cannot and do not warrant or predict results or final developments. Judges are granted great discretion in Family Court matters. The international aspect of the case engenders additional uncertainty. Be assured, however, that it is our desire to afford you conscientious, faithful and diligent service, seeking at all times to achieve solutions that are just and reasonable for both you and your children.

If the foregoing meets with your approval, kindly signify your consent and approval by signing your name in the space provided below. Insert the date and return the original of this letter to us at your earliest convenience.

I have also included a copy of my resume so that you have the opportunity to review my credentials. If you have any questions or concerns regarding this letter, please let me know. I look forward to our working together.

Very truly yours,

PARAS, APY & REISS, P.C.  
BY: Patricia E. Apy, Esquire

PEA/ab  
Consented to and approved:

DATED: \_\_\_\_\_

\_\_\_\_\_

cc: N.C.M.E.C.

Judges:

Select Good Practices For Analyzing the "Grave Risk" Defense

"Had the framers of the Convention meant to provide for special considerations in cases involving children abducted by their primary caretaker during their bonding years, they could easily have done so.... To acknowledge an interruption in the bonding process, absent unusual circumstances, as the basis for a "grave risk defense" elevates the defense to a status higher than the need for return of the child. Because of the potential for its frequency of use, the exception would soon become the rule."

The Hon. James D. Garbolino  
Placer County Superior Court  
Auburn, California

- ◆ Courts must narrowly construe the Hague Convention "grave risk" defense.
- ◆ Courts should reject a "grave risk" defense based on interruption of the bonding process absent unusual circumstances.
- ◆ Do not follow the court's broad interpretation of the grave risk defense in Steffen F. v. Severina P., 966 F. Supp. 922 (D. Ariz. 1997).
- ◆ Use undertakings or other creative solutions to return a child without necessarily separating him or her from an abducting parent who is the primary caretaker.

Background

The success of the Hague Convention on the Civil Aspects of International Child Abduction in deterring abductions, and in rapidly restoring children to the circumstances that existed before they were abducted or wrongfully retained, depends in large part on the state and federal court judges who must decide return petitions, often as a matter of first impression. Foremost, judges must understand that a Hague Convention case is not a substantive custody case. It is not about determining the "best interests of the child". The issues are much narrower in the Hague case and do not result in a ruling on the merits of custody. If the petitioner establishes that the child's removal or retention was wrongful within the meaning of the Convention, the court has a treaty obligation to order the child returned unless one of the defenses set forth in the Convention applies. Even then, the court has discretion to order the child's return.

Judge Garbolino is recognized as a judicial authority on the Hague Child Abduction Convention. Asked to share a “good practice” tip for judges in using the Hague Convention, Judge Garbolino analyzed the “grave risk” defense. This is one of the limited number of exceptions to the return obligation set forth in the Convention. He argues for a narrow construction of the defense. He is critical of a recent decision which broadly interpreted “grave risk” to include the psychological harm that a young would child would suffer by disruption of his bonding with his primary-caretaker parent who created the situation by abducting the child in the first place. Judge Garbolino suggests how courts can order a child returned without necessarily interrupting the bonding process. This does justice to the Convention and protects the child at the same time.

The paper Judge Garbolino prepared for this chapter is entitled *Analyzing the “Grave Risk” Defense*. It is reprinted in full as Attachment J.

### Discussion

Courts must narrowly construe the Hague Convention “grave risk” defense. This was intended by its framers. To ensure that the defense remains an exception rather than become the rule, Congress required an Article 13b defense to be proved by clear and convincing evidence.

Judge Garbolino cites approvingly the Sixth Circuit Court of Appeals’s interpretation of “grave risk” in Friedrich v. Friedrich, 78 F.3d 1060 (6th Cir. 1996) (“...we believe that a grave risk of harm for purposes of the Convention can exist in only two situations. First, there is a grave risk of harm when return of the child puts the child in imminent danger prior to the resolution of the custody dispute -- e.g., returning the child to a zone of war, famine, or disease. Second, there is a grave risk of harm in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection.”).

In contrast, Judge Garbolino is troubled by a broad interpretation of the grave risk defense in the case of Steffen F. v. Severina P., 966 F. Supp. 922 (D. Ariz. 1997). The court in that case accepted the abductor-mother’s argument that a grave risk of harm would exist if her three year old son were returned to Germany. It said: “The grave risk of harm arises from the fact that Jaime F. has attached and bonded to his mother and is likely to suffer detachment and unbonding should he be removed from her.”

Courts should reject “grave risk” defenses based on interruption of the bonding process absent unusual circumstances, *i.e.*, unless the adverse effects cannot be ameliorated and are likely to be permanent. Because so many abduction cases involve young children taken by the primary caretaker parents, an interruption in bonding defense would render the Convention meaningless for many of the children it was designed to protect. Moreover, it fails to take into account that the abductor created the very situation he/she seeks to profit from, which simultaneously denied the child the opportunity to bond with the left-behind parent.

Importantly, the goal of the Convention (*i.e.*, returning children to their countries of habitual residence so that custody decisions can be made) can be achieved without jeopardizing the psychological well-being of the child. One way is for the court to order return but allow the child to return in the care of the abducting parent. Another way is through 'undertakings,' that is, stipulations usually made by the parent seeking return that agree to certain conditions of return.

## Analyzing The "Grave Risk" Defense

Hon. James D. Garbolino

With increasing frequency, the defense of "grave risk" is being raised by abducting parents in an effort to defeat an action for return of a child under the Hague Convention<sup>1</sup>. In some instances, this defense is the only viable alternative for an abducting parent to serve up to a court in a case where a clear case of wrongful removal is made out. Given the limited number and scope of the defenses for a case for return of a child wrongfully abducted, it is not wholly unexpected that claims of domestic violence, child abuse, and psychological harm will argued as "grave risk" bases upon which to deny return to the child's habitual residence. Such cases certainly exist, and when proven such defenses should be sustained. Nevertheless, there is a real danger for courts to exceed the scope and intent of the Convention when the defense amounts only to a showing of transient or reparable harm. Courts should also be wary not to deny the return of a child where the courts or officials of the habitual residence have the ability to cope with the allegations of threatened harm, or can provide sufficient protections to obviate their effect upon the child. U.S. courts should also be made aware that their own powers may be invoked to insure that any psychological trauma to the child may be avoided through the use of orders for return which address the issues of safety or emotional distress of the abducting parent and the child.

Courts will find the text of the "grave risk" defense in Article 13b of the Convention. This provision permits a court to refuse to return a child if it finds that "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." As with the other defenses under the Convention, even though a defense of grave risk is established, the court is still not required to deny the petition,<sup>2</sup> and the court may exercise its

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<sup>1</sup>Hague Convention on the Civil Aspects of International Child Abduction, Senate Treaty Doc. 11, 99th Cong., 1st Sess. 9 (1980) reprinted in 19 I.L.M. 1501 (1981) [hereinafter Convention].

<sup>2</sup> "Most experts reported that in their jurisdictions Article 13 b is given a very narrow interpretation and that therefore few defences based upon this argument are successful." Report of the Second Special Commission Meeting to Review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction 33 I.L.M. 225, 241 (1994) Response to question 19.

discretion to order the child returned.<sup>3</sup>

One recent case represents a troubling departure from previously reported U.S. cases which have dealt with this issue. In *Steffen F. v. Severina P.*, ----F.Supp. ---- 1997 WL 306461 (D.Ariz), the court held that despite a particularly egregious case of wrongful removal by the child's mother, the return of a three year old child to Germany would disrupt the child's bonding, and would likely cause the child to suffer long term psychological damage. In *Steffen F.*, Father and mother lived in Germany, and married in December 1993. Four months later, Jaime, a son was born. The family lived together with mother's child from a previous relationship. When Jaime was a year old, the parents separated. The parties negotiated a separation agreement, with father having custody of Jaime on alternate weekends and at other times during the week which were agreed upon. In November, 1995, mother left Germany surreptitiously, sending father a letter which said, in part, "As you read this letter, we are already out of the country.... If you try to find me, good luck." Mother settled in Tucson, Arizona. She filed an action for dissolution of her marriage, and served father with process. In April, 1996, father obtained a temporary custody order from German Courts, and made an application directly with the U.S. Central Authority for the return of the child. Mother's action for dissolution proceeded to judgment, however, the court did not make an order with regard to Jaime. Father filed an action for return of the child under the Hague Convention in July, 1996 in federal district court. During the pendency of those proceedings, father obtained a permanent custody order granting him custody of the child in February, 1997 from German courts.

Trial took three days, with both father and mother in attendance. Mother raised, inter alia, the defense of "grave risk" based upon a removal of Jaime from his mother. Mother's expert psychologist testified that a grave risk existed because if Jaime were removed from his mother for any period of time longer than a few weeks, the child would likely become unbonded and unattached to the mother. This would likely produce long-term, serious psychological problems. The court analyzed the proof as follows:

"Severina P. also provided evidence of another source of grave risk to Jaime F. if he were returned to Germany, that being psychological harm. Dr. Jerry Day offered compelling testimony that Jaime F. faces a grave risk of psychological harm if he is returned to Germany. After testifying that

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<sup>3</sup> The Explanatory Report of Perez-Vera explains at paragraph 113 as follows: "In general, it is appropriate to emphasize that the exceptions in these two articles do not apply automatically, in that they do not invariably result in the child's retention; nevertheless, the very nature of these exceptions gives judges a discretion - and does not impose upon them a duty - to refuse to return a child in certain circumstances." See also Text & Legal Analysis, at 10510 ("Under Article 13(b), a court in its discretion need not order a child returned if there is a grave risk that return would expose the child to physical harm or otherwise place the child in an intolerable situation.")



Jaime F. was bonded and attached to his mother, Dr. Day stated that removal of Jaime F. from his mother for any period of time longer than a few weeks would likely result in unbonding and unattachment. He stated that a grave risk exists because a child being unbonded and unattached often produces long-term, serious psychological problems. Such children often grow up to be manipulative and untrusting. He stated that sociopaths tend to be adults who were unbonded as children. He also stated that a painful separation such as would occur here should Jaime F. return to Germany would likely result in Jaime F. suffering significant disorders. Dr. Day further testified that, although it is possible for a child of Jaime F.'s age who has bonded and attached to his mother, upon removal from her, to reattach to the child's father, the prospects for rebonding and reattachment are bleak."

\* \* \* \* \*

"Having weighed all the evidence before it, the Court concludes that Respondent Severina P. has proven by clear and convincing evidence that a grave risk of harm exists if Jaime F. were returned to Germany. The grave risk of harm arises from the fact that Jaime F. has attached and bonded to his mother and is likely to suffer detachment and unbonding should he be removed from her.

This case is troubling from the standpoint that where an abduction is carried out by a primary caretaker, the abductor may easily raise the issue of an interruption in bonding as a potential defense to return of the child. While an interruption in bonding can be a real and significant problem, its genesis is found in the actions of the abductor in removal of the child. On the other hand, the abduction has prevented the left-behind parent from an opportunity to bond. The court in *Steffan F.* acknowledged the conundrum of rewarding an abductor by allowing a bonding argument to be sustained in response to a petition for return of the child. It was not the first court to acknowledge the problem, but it is the first U.S. case to arrive at the conclusion that the defense would be sustained and the petition for return denied.

Frankly, it would appear that "grave risk" defense should be based upon better stuff. In *Friedrich v. Friedrich (Friedrich II)*, 78 F.3d 1060 (6th Cir.1996) the court enumerated those types of dangers which might be considered to create a "grave risk" of the type of harm envisioned by the Convention.

"Although it is not necessary to resolve the present appeal, we believe that a grave risk of harm for the purposes of the Convention can exist in only

two situations. First, there is a grave risk of harm when return of the child puts the child in imminent danger prior to the resolution of the custody dispute--e.g., returning the child to a zone of war, famine, or disease. Second, there is a grave risk of harm in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection."

Friedrich's analysis is supported in part by the general agreement that abuse of a child is a "grave risk" which the Convention contemplates.<sup>4</sup> Other courts have allowed the possibility of other factors which might sustain such a defense, namely *Nunez-Escudero v. Tice-Menley*, 58 F.3d 374 (8th Cir. 1995) [domestic violence]; *Caro v. Sher*, 296 N.J.Super. 594, 687 A.2d 354 (1996)[alleged lack of functioning judicial system], although the defense was not proved in either case.

The issue of a disruption in the bonding process falls squarely within the question whether the "grave risk" amounts to a transient or temporary situation, or whether there are indications that the child would suffer long-lasting and more permanent harm.<sup>5</sup>

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<sup>4</sup> "The person opposing the child's return must show that the risk to the child is grave, not merely serious. An example of an "intolerable situation" is one in which a custodial parent sexually abuses the child. If the other parent removes or retains the child to safeguard it against further victimization, and the abusive parent then petitions for the child's return under the Convention, the court may deny the petition. Such action would protect the child from being returned to an "intolerable situation" and subjected to a grave risk of psychological harm." Text & Legal Analysis, 51 Fed.Reg. 10494, 10510. See also *Friedrich v. Friedrich* (*Friedrich II*), supra 78 F.3d 1060, 1068 ("An example of an "intolerable situation" is one in which a custodial parent sexually abuses the child."); *In re Shoshana B.*, supra, 34 Cal.App.4th 584, Ordered not Published, ("...classic grave risk exception exists where the minor has been sexually abused by the custodial parent"). But see Report of the Second Special Commission Meeting to Review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction 33 I.L.M. 225 (1994) Response to question 22, which casts some doubt upon this general acceptance: "Furthermore, another expert wondered whether this provision might be used in cases where the parent from whom the child has been abducted had subjected the child to sexual abuse. Others pointed out that in such cases the returning State should entrust the requesting State to make a proper pronouncement on the issue of custody. They suggested that in such cases all that was necessary was to ensure that the child is properly protected during the substantive hearing either by allowing him or her to return in the custody of the abducting parent or by placing him or her in the custody of a third party. Id, 33 I.L.M. 225, 241.

<sup>5</sup> *Slagenweit v. Slagenweit* (D. Iowa 1993) 841 F.Supp. 264, *infra*. Similarly, where there is no evidence of actual harm, the court will not imply harm simply on the basis that a child will be deprived of the company of their primary caretaker. See *Rydder v. Rydder* (8th Cir. 1995) 49 F.3d 369 ("Although Mrs. Rydder cites several authorities that recognize that separating a child from his or her primary caretaker creates a risk of psychological harm (see Linda Silberman, *The Hague International Child Abduction Convention: A Progress Report*, 57 L. and Contemp.Probs., Summer 1994, at 209;

See *Renovales v. Roosa*, 1991 WL 204483 (Conn.Super. 1991) [Court acknowledged that psychological effects attending a return were insufficient to constitute a "grave risk"]. Even though some degree of psychological damage may be expected from a return of a child, the return of the child should not be denied unless the adverse effects cannot be ameliorated, and are likely to be permanent in nature. See *Slagenweit v. Slagenweit*, 841 F.Supp. 264 (effects of the return were temporary should have "no long-lasting effect" upon the child.)<sup>6</sup>

Courts are not so callous as to deny that a child who is abducted by one parent will undergo psychological difficulties when ordered to return to his or her habitual residence. But clearly, this type of harm is potentially present in most cases arising under the Convention.<sup>7</sup> The issue is squarely met in *Friedrich II*, supra, 78 F.3d 1060,:

"Mrs. Friedrich advocates a wide interpretation of the grave risk of harm exception that would reward her for violating the Convention. A removing parent must not be allowed to abduct a child and then--when brought to court--complain that the child has grown used to the surroundings to which they were abducted. [fn. 9 - Under the logic of the Convention, it is the abduction that causes the pangs of subsequent return. The disruption of the usual sense of attachment that arises during most long stays in a single place with a single parent should not be a "grave" risk of harm for the purposes of the Convention.] 78 F.3d 1060, 1068.

The danger in following the *Steffan F.* case lies for good reason. The defenses set forth under the Convention are to be interpreted narrowly. This rule of interpretation

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Carolyn Legette, *International Child Abduction and the Hague Convention: Emerging Practice and Interpretation of the Discretionary Exception*, 25 Texas Int'l. L.J. 287 (1990)), the district court was presented with no specific evidence of potential harm to Bjorn Jacob or Emmelie Marie Rydder. On the contrary, the district court found both parties to be "intelligent, mature, loving parents," and this finding was not clearly erroneous. Thus the district court properly determined, on the basis of the evidence presented, that Article 13(b) was not an obstacle to the return of the children to Poland." )

<sup>6</sup> Note, however, that the court refused to order the child's return based upon a finding that the child's habitual residence had changed from Germany to the United States.

<sup>7</sup> c.f. *Thompson v. Thompson*, 3 R.C.S. 551 34 I.L.M. 1159 where the court rejected the notion that wresting the child from its primary caretaker is an acceptable byproduct of the initial abduction. "As this Court stated in *Young v. Young*, [1993] 4 S.C.R. 3, from a child centred perspective, harm is harm. If the harm were severe enough to meet the stringent test of the Convention, it would be irrelevant from whence it came. I should observe, however, that it would only be in the rarest of cases that the effects of "settling in" to the abductor's environment would constitute the level of harm contemplated by the Convention." *Id.*, 34 I.L.M. 1159, 1177.

is reinforced by the subsequent decision of Congress to attach a higher burden of proof upon the proponent of the defense (i.e. clear and convincing evidence). Taken together, these bases seem to cry out for an interpretation which prevents the favored case for return from being consumed by a defense based upon a broad interpretation of "grave risk". Had the framers of the Convention meant to provide for special considerations in cases involving children abducted by their primary caretaker during their bonding years, they could easily have done so. Many children who are abducted may fall within the critical years for their bonding attachments. The issue will usually arise when the abducting parent is the primary caretaker<sup>8</sup> (although as noted above, abduction interrupts bonding with the left-behind parent). To acknowledge an interruption in the bonding process, absent unusual circumstances, as the basis for a "grave risk defense" elevates the defense to a status higher than the need for return of the child. Because of the potential for its frequency of use, the exception would soon become the rule.

Furthermore, Steffan F.'s approach to the resolution of the "grave risk" issue was an "all or nothing" proposition. Despite the fact that a court is vested with the discretion to order a child returned even if a defense is sustained, the trial court simply denied the father's petition for return. Other alternatives were available.

Our European brethren have recognized the utility of "undertakings" or formal stipulations between the parent seeking return of the child and the court which ameliorate the sometimes harsh conditions of return. These may include arranging for orders which protect against domestic violence, orders for support, maintenance, and access in the state of habitual residence, and orders which permit the child to be returned in the custody and control of the abducting parent. While the Convention does not refer to "undertakings", neither does it prohibit their use. Some critics of the use of undertakings note that they are absolutely unenforceable in the state of habitual residence, and as such provide only facial remedies which may not be adopted by the courts in the state of habitual residence. In cases like Steffan F., however, such undertakings would allow a court to avoid harm to the child by ordering the child returned to the habitual residence in the custody of the primary (abducting) caretaker. After the return, courts should be content to trust to the wisdom and experience of the courts of the habitual residence to deal with the issue of the "best interests" of the child in light of the bonding issues raised by the removing parent.

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<sup>8</sup> The inequity of such a rule can be seen if applied to a situation in which an infant, perhaps only several days old, is abducted from the person who expected to be the child's primary caretaker, only to be hidden for a year or more by the abducting parent. A refusal to return the child in such a case merely extends the facts of Steffan F., but the injustice of refusing return becomes more pointed.

Central Authorities:  
Selected Good Practices of the State Department, Office of Children's Issues,  
U.S. Central Authority for the Hague Child Abduction Convention

“We are actively involved in trying to encourage interagency cooperation in international parental child abduction cases.”

Raymond E. Clore, Director  
Office of Children's Issues and U.S. Central Authority,  
Department of State

- ◆ Promotes prevention measures to deter international abductions.
- ◆ Communicates information about the Hague Child Abduction Convention to American courts.
- ◆ Following an outgoing abduction, suggests that parents first seek voluntary return, then civil legal action and criminal extradition.
- ◆ Systematically encourages other countries to ratify the Hague Child Abduction Convention.
- ◆ Involved in ongoing effort to improve interagency cooperation and responsiveness to families affected by international abductions.
- ◆ Disseminates information to help parents when there is a risk of abduction and when an international abduction has already occurred.
- ◆ Maintains computerized databases to analyze case dispositions and facilitate follow-up with parents and foreign central authorities.

Background

The Office of Children's Issues (“OCI”) in the Bureau of Consular Affairs of the U.S. Department of State is the point of contact for hundreds of parents in the United States and abroad whose children have been abducted from, or to, this country. The director of the office is a foreign service officer. The position rotates every two years. OCI's staff of consular officers work on international adoption policy issues in addition to international child abduction cases. An outstanding publication developed by the Office of Children's Issues, *International Parental Child Abduction* (11th Ed., July 1997), summarizes what the State Department can and cannot do when a child is abducted. A reprint of the summary is provided as Attachment K.

The Office of Children's Issues serves as the U.S. Central Authority ("CA") under the Hague Child Abduction Convention.<sup>3</sup> In this capacity, it processes applications for return in "outgoing" cases, *i.e.*, case in which children have been wrongfully removed from the U.S. and retained in other Hague countries. The operational aspects of the Central Authority in "incoming" cases, *i.e.*, cases in which children have been wrongfully removed from other Hague countries and retained in this country, have been delegated to the National Center for Missing and Exploited Children (See page 3).

The State Department's Office of Children's Issues is accessible by phone (202-736-7000), fax (202-647-2835), or by logging onto their Internet site (<http://travel.state.gov>). An automated fax system can be accessed directly by another fax machine by dialing 202-647-3000.

Raymond Clore, Director, U.S. Central Authority and Office of Children's Issues, and Jim Schuler, consular officer, were interviewed by Patricia Hoff. The quoted material in the following text is excerpted from that interview.

**Promotes prevention measures to deter international abductions.**

Prevention education is a priority for OCI. The director of the office and other staff members present continuing legal education programs for judges and lawyers around the country. The speakers always emphasize the need to consider prevention measures whenever international marriages are dissolving, and to implement them in appropriate cases. Judges are told to take into account the foreign national parent's ties to his or her home country, whether that country would allow an American parent to leave the country with the child if the need for enforcement arose, the duration of the foreign parent's stay in the U.S., and other risk factors identified by the ABA Center on Children and the Law in a research study.

When a Hague solution is possible, liberal visitation may not be a problem. It depends on the specific facts of a case whether or not unsupervised liberal visitation would be appropriate, even if the spouse's ties are to a Hague party country. If the spouse is from a Middle Eastern country, not party to the convention, then no unsupervised visits may be appropriate if risk of abduction exists, because the child is likely to be unrecoverable. Judges are urged to consider imposing large monetary bonds (minimum \$100,000) on the spouse with foreign ties to cover the high cost of airline tickets, legal fees, and other costs likely to be incurred by the other parent if the child is abducted.

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<sup>3</sup>Since submission (but before publication) of this report, NCMEC, in cooperation with the Office of Children's Issues, has assumed a greater role in outgoing Hague Convention cases. NCMEC provides instructions on how to proceed under the Hague Convention, and helps parents prepare their Hague applications and obtain supporting documents.

A general prevention letter is available from OCI. It is not country specific. It may help a parent persuade a court to order preventive measures. A copy of the letter is provided as Attachment L. About twenty country specific flyers are also available from OCI.

Parents are advised to call the U.S. Passport Office to put a hold on passports. Calls to OCI can be transferred directly to the passport office. Parents are warned that a hold may slow an abductor down, but will not necessarily stop an abduction. They are also referred to the National Center for Missing and Exploited Children for their prevention materials.

**Communicates information about the Hague Child Abduction Convention to American courts.**

It is a Central Authority function to let judges know about the Hague Child Abduction Convention at the request of the applicant. Toward this end, a letter on State Department stationery is sent to judges in the U.S. who have Hague cases pending in their courts. Since NCMEC assumed operational responsibility for processing incoming Hague cases, that organization informs the CA of the need to send a letter to a particular judge who will be considering a Hague case. CI prints the letter, which is signed by Ray Clore and then sent to the judge. Copies are sent to petitioner's counsel and to opposing counsel, if known. A copy of the letter is provided as Attachment M.

Upon request of a foreign Central Authority or one of the parents, the CA also sends a standardized letter to the court to request an explanation if the court has not disposed of a Hague petition within six weeks. In outgoing cases, the U.S. CA has requested its foreign counterparts to make similar inquiries to foreign courts on behalf of parents in the U.S. who have return cases pending abroad.

Along the same lines, the CA serves as a continuing resource for parents in outgoing abduction cases to Hague Convention countries. Mr. Schuler explained: "Many of our left-behind parents say they don't deal with the foreign Central Authority directly, they prefer to deal with us... [W]e send lots of faxes and inquiries to foreign Central Authorities, sometimes on a daily basis" in order to keep left-behind parents informed of the status of their case.

**Following an outgoing abduction, OCI suggests that parents first seek voluntary return, then civil legal action and then criminal remedies, including extradition.**

If prevention has failed, OCI urges parents to contact its offices to get its materials as quickly as possible so they can educate themselves about what can be done to recover the child. Mr. Schuler cautioned against precipitous communication with the abductor; divulging too much to the abductor before understanding the legal situation can jeopardize return. Mr. Clore said that once the left-behind parent better understands his or her lawful options for recovering the child, "we do try to encourage them to come to an amicable solution. It's always better if the spouses can work it out without going through the legal system."

Mr. Clore stated: "We try to give parents their realistic options under the circumstances in a clear and sympathetic manner. Many people call us with frankly unrealistic notions about what the U.S. Government can do to help them. For example, people ask why we don't we just stop buying oil from Saudi Arabia until we get their children back. Their situation is tragic and it is very difficult for me or my officer to tell them that such notions are unrealistic and just are not going to happen. We have to give them a reality check; what can be done both from their personal standpoint, from a legal standpoint, and then from an overall, general U.S. Government standpoint."

If a voluntary solution is not reached, then OCI recommends civil legal action. If the abduction is to a Hague country, the U.S. Central Authority will transmit a Hague return application to the appropriate foreign Central Authority, and serve as a liaison to that office for the left-behind parent on an ongoing basis. If the abduction is to a non-Hague country, left-behind parents must understand that the State Department cannot enforce custody orders abroad. OCI can suggest that the U.S. left-behind parent secure an attorney abroad to attempt to enforce the U.S. custody order or to obtain a parallel order in a foreign local court. The State Department can provide assistance in obtaining evidence abroad and serving process abroad. Lists of lawyers in the foreign country are also available. Upon request, the consular officers in the foreign country will conduct a "welfare and whereabouts" check on the status of the child. A goal is to try to help build a relationship of trust between all family members so that the problems can be resolved without legal action.

OCI advises parents to contact law enforcement after an abduction. If civil remedies fail, or if there are aggravated circumstances surrounding the abduction, pursuing criminal extradition of the abductor should be considered. Clore cautioned, "Extradition, if successful, returns the abductor to the U.S., not necessarily the abducted child. The child is not the criminal and may be left with the abductor's relatives in the foreign country while the abductor is prosecuted in the U.S." The U.S. does not have extradition treaties with all countries. Only the more recent treaties include provisions that allow the extradition of parental child abductors. Older treaties, called "list treaties," allowed extradition for "kidnapping," but this was not understood to include parental child abduction. The State Department Office of the Legal Advisor is currently working with Congress to change the old understanding of "kidnapping" in list treaties to make it clear that parental kidnapping is covered by existing treaties that list "kidnapping" as an extraditable offense.

Parents are advised against using desperate measures to recover their children from abroad. There is an obligation to abide by local law; if those laws are broken, the parent may face criminal prosecution abroad. Reabduction is also traumatic and possibly dangerous to the child.



## **Systematically encourages other countries to ratify the Hague Child Abduction Convention.**

Once a year, the State Department contacts U.S. Embassies and Consulates in all countries that have not signed or ratified the Hague Abduction Convention to urge the host country to consider the benefits of adhering to the Convention. In addition, OCI follows up with targeted posts, urging additional efforts where it is felt that adherence would be most likely and helpful to the American public.

Mr. Clore states, "To my knowledge, the U.S. is the only country that regularly urges wider adherence to the Hague Abduction Convention. We continually bring it to the attention of appropriate foreign governments and try to help them understand that the Convention is a two-way street. It's not just that the U.S. hopes to have U.S. children sent back to the U.S., but the Convention would also benefit their children who are wrongfully brought to or retained in this country. We point out to other governments that while 60% of the cases reported to our office are U.S. children taken abroad, about 40% involve children wrongfully abducted from foreign countries to the U.S. So it's not quite 50/50, but there's a very large number of children who are abducted from abroad and brought to this country. We bring that to the attention of foreign governments and we say that it's in their interest as well that we have a stable, transparent, internationally accepted way of handling these tragic situations."

OCI encourages countries to consider enacting legislation similar to the International Child Abduction Remedies Act (ICARA) -- to facilitate implementation of the Convention.

With regard to other countries that may accede to the Convention in the future, OCI intends to establish criteria for scrutinizing potential new treaty partners before accepting their accessions. Among the questions that will be asked are: Will there be problems in implementing the Convention? Does the country have a Central Authority? Are there legal or cultural practices that would be unacceptable to the U.S., for instance, forced marriages? Does the country have uniform implementing legislation?

## **Involved in ongoing effort to improve interagency cooperation and responsiveness to families affected by international abductions.**

Clore states, "There is a need for very close coordination among all entities that work on parental child abduction cases, and in particular the need for better coordination of the U.S. Federal Government response to this issue." OCI promotes interagency cooperation so that agencies of federal government are mutually supportive and non-duplicative.

There currently is an interagency task force, spearheaded by the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, that intends to develop a road map for left-behind parents whose children are abducted from the U.S. The task force will clarify what the government can and cannot do in international abduction situations, and who the left-behind parent can call for help in preventing abductions, locating abducted children, and in securing access to, or return of, the child.

Participating agencies include three offices of the State Department (OCI, Diplomatic Security and the legal affairs office that deals with extradition ), the Justice Department (OJJDP and Office of International Affairs) and INTERPOL. Justice will bring in the FBI which has just created an office to deal with crimes against children. Other participants will be Customs, Immigration, the Executive Office of the U.S. Attorneys, and NCMEC.

**Disseminates information to help parents when there is a risk of abduction and when an international abduction has already occurred.**

OCI has a variety of materials to assist parents of internationally abducted children. A *must* for any parent faced with an international abduction is *International Parental Child Abduction* (11th Ed., July 1997). In addition, OCI publishes about 20 country specific flyers to help persons facing an international parental child abduction situation.

Information is available free of charge and may be obtained from the State Department in conventional and electronic forms. The above-referenced booklet, and other materials, may be obtained by telephone or written request to OCI, or by accessing OCI's autofax network, or may be downloaded from the State Department's Internet site.

The State Department's Office of Children's Issues is accessible by phone (202-736-7000) or fax (202-647-2835). The Internet site is <http://travel.state.gov>. The automated fax system (AUTOFAX) can be accessed directly by another fax machine by dialing 202-647-3000. A complete index is presented from which the caller selects the desired materials for fax transmission.

**Maintains computerized databases to analyze case dispositions and facilitate follow-up with parents.**

Using automation for case tracking and statistical analysis is a recent innovation at OCI. A five-month-long project to load all current child abduction files onto an automated database was recently completed. This computerized database will enable OCI to do statistical studies to determine case outcomes in Hague and non-Hague cases. OCI also plans to contact left-behind parents in pending Hague cases at least once a month. In non-Hague cases, the plan is to maintain periodic contact with left-behind parents.

**PART II****WHAT THE STATE DEPARTMENT CAN AND CANNOT DO  
WHEN A CHILD IS ABDUCTED ABROAD**

When a U.S. citizen child is abducted abroad, the State Department's Office of Children's Issues (CI) works with U.S. embassies and consulates abroad to assist the left-behind parent in a number of ways. Despite the fact that children are taken across international borders, child custody disputes remain fundamentally private legal matters between the parents involved, over which the Department of State has no jurisdiction. If a child custody dispute cannot be settled amicably between the parties, it often must be resolved by judicial proceedings in the country where the child is located.

***WHAT THE STATE DEPARTMENT CAN DO:***

- In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies (see Part IV), assist parents in filing an application with foreign authorities for return of the child;
- In other cases, attempt to locate, visit and report on the child's general welfare;
- Provide the left-behind parent with information on the country to which the child was abducted, including its legal system, family laws, and a list of attorneys there willing to accept American clients;
- In all cases, provide a point of contact for the left-behind parent at a difficult time;
- Monitor judicial or administrative proceedings overseas;
- Assist parents in contacting local officials in foreign countries or contact them on the parent's behalf;
- Provide information concerning the need for use of federal warrants against an abducting parent, passport revocation, and extradition from a foreign country to effect return of a child to the U.S.;
- Alert foreign authorities to any evidence of child abuse or neglect.

***WHAT THE STATE DEPARTMENT CANNOT DO:***

- Intervene in private legal matters between the parents;
- Enforce an American custody agreement overseas (U.S. custody decrees are not automatically enforceable outside of U.S. boundaries);
- Force another country to decide a custody case or enforce its laws in a particular way;
- Assist the left-behind parent in violating foreign laws or reabduction of a child to the United States;
- Pay legal or other expenses;
- Act as a lawyer or represent parents in court;
- Translate documents



United States Department of State

*Washington, D.C. 20520*

Attachment L

**ABDUCTION - PREVENTION LETTER**

To Whom it may concern:

This letter is written to provide information concerning international parental child abduction. I hope the following will be useful:

Since the late 70's, the Office of Citizens Consular Services has taken action in over 5,000 cases of international parental child abduction, including wrongful removals of children and wrongful retentions after court-ordered visitation. We also have provided information in response to thousands of additional inquiries pertaining to international child abduction, enforcement of visitation rights, and abduction prevention techniques. Our office works closely with parents and attorneys here in the United States to prevent international abductions and the pain and suffering they bring to the victims, both the children and their left-behind parents.

Many children who are the victims of international parental abduction are considered to be citizens of another country as well as of the U.S. and, as such, could travel abroad on a foreign passport. Issuance of a foreign passport is, of course, a matter within the control of the particular country involved, rather than the U.S. Please refer to the enclosed booklet, "International Parental Child Abduction", for further information on dual nationality and additional prevention information.

In many of the cases referred to us, children have been abducted to or retained in a foreign country notwithstanding an American custody order. As a general rule, foreign courts are under no obligation to give legal effect to a custody decree issued by a U.S. court. When a child is abducted or retained by a parent, the deprived parent usually must initiate legal proceedings in the foreign country to regain custody of the child.

The Hague Convention on the Civil Aspects of International Child Abduction, which has now been joined by 43 nations including the United States, offers some relief for the

left-behind parent (list of party countries enclosed). This Convention attempts to discourage the use of abduction as a means of resolving a custody matter, by requiring (with few exceptions) the abducted child to be returned to the country where it resided prior to the alleged abduction. This office has received approximately 1,000 applications under the Hague Convention per year. If you believe that your child(ren) might be taken to a country party to the Convention, you should consult with your attorney concerning the advisability of incorporating the precepts of the convention into your custody decree.

There are still many countries, however, where the Convention has not been accepted. In the event of an abduction to a country not party to the convention the only option for a left-behind parent is often to obtain legal assistance in the country of the abduction and follow through a court action in that country. This is often a difficult, expensive, and not always satisfactory solution to the problem.

As you may know, our consular officers overseas do not have the authority to take custody of American children and return them to parents to the United States. Any attempt by a consular officer to do so could be viewed by the foreign authorities as kidnapping.

I hope that you find this information helpful. If you have further questions, please do not hesitate to contact this office at (202) 736-7000.

Office of Children's Issues  
Bureau of Consular Affairs  
United States Department of State

WWOCSCI 993504 1996

Attachment M

**UNITED STATES CENTRAL AUTHORITY  
HAGUE CONVENTION ON THE CIVIL ASPECTS OF  
INTERNATIONAL CHILD ABDUCTION  
Office of Children's Issues, Room 4811  
Bureau of Consular Affairs  
Department of State  
Washington, D.C. 20520**

**July 1, 1997**

**Dear Judge:**

As you know, on July 1, 1988, the (1980) Hague Convention on the Civil Aspects of International Child Abduction (the 'Convention') entered into force between the United States and The International Child Abduction Remedies Act of April 29, 1988, Pub. L. No. 100-300, implemented the Convention for the United States. Department of State regulations can be found at 22 C.F.R. Part 94. The Convention is available at 51 Fed. Reg. 10503 (1986). The Convention is a treaty of the United States within the meaning of Article II of the Constitution.

The Department of State performs the functions of the Central Authority for the United States for the purpose of Article II of the Convention, which requires that the judicial or administrative authorities of Contracting States act expeditiously in proceedings for the return of children. As of September 5, 1995, by agreement between the National Center for Missing & Exploited Children and the U.S. Central Authority, applications seeking the return of or access to children allegedly abducted to or retained in the United States are being processed by the National Center for Missing & Exploited Children.

We are writing to inform you that [redacted] has filed an application with the U.S. Central Authority under the Hague Convention for the return of [redacted]. We draw the Court's attention to Article 16 of the Convention which provides that "...judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits or rights of custody until it has determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice."

We also invite your attention to Article 17, which provides that "the sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention."

Finally, according to Article 12 of the Treaty, if a petition is filed within a year of a child's wrongful removal or retention, courts "shall order the return of the child forthwith." Furthermore, even if more than one year has elapsed from the time of the wrongful removal or retention, courts "shall order the return of the child unless it is demonstrated that the child is now settled in its new environment." Article 12 also requires the judicial or administrative authorities of Contracting States to "act expeditiously in proceedings for the return of children."

Please find attached the Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction published in the Federal Register on March 26, 1986 (Vol. 51, No. 58) and a copy of the explanatory report of Elias Perez-Vera. The Perez-Vera report is recognized by the Hague Conference on Private International Law as the official history and commentary on the Convention and is a source of background on the meaning of its provisions.

This letter should not be construed by the Court as constituting an opinion of the United States, the Department of State or of the National Center for Missing & Exploited Children regarding the merits of the case. Our purpose is solely to apprise you of the Convention and of the request pursuant thereto and to request expeditious consideration as required by Articles 2 and 11 of the Convention. Should you have any questions or need additional information, please do not hesitate to contact \_\_\_\_\_ at the National Center for Missing & Exploited Children at (800) 843-5678, ext. 6128.

Sincerely,

Raymond E. Clore  
Director  
United States Central Authority

Central Authorities:  
Selected Good Practices of the United Kingdom's  
Lord Chancellor's Child Abduction Unit<sup>1</sup>

"The comity of nations requires the prompt and consistent implementation of the Hague Convention. The United Kingdom Lord Chancellor's Child Abduction Unit plays a vital part in safeguarding the interests of children everywhere."

Rt. Hon. Sir Stephen Brown  
President of the Family Division

Background

The Lord Chancellor's Child Abduction Unit ("the CAU") is the Central Authority for England and Wales for the two international conventions on child abduction, the Hague Child Abduction Convention and the European Convention on the recognition and enforcement of custody decisions,<sup>2</sup> to which the United Kingdom is a party. There are also Central Authorities in Scotland and Northern Ireland; the Lord Chancellor is the Central Authority for Northern Ireland, and the Secretary of State for Scotland is the central authority for Scotland. Although the United Kingdom has three central authorities, reflecting its three distinct legal jurisdictions, all three operate in the same way.

The CAU, now the busiest central authority after the United States, was created when the Hague Child Abduction Convention and the European Convention were incorporated into the law of the United Kingdom by the Child Abduction and Custody Act 1985, which came into force on August 1, 1986.

The CAU was originally in the headquarters of the Lord Chancellor's Department, in Westminster, near to the Houses of Parliament, but in April, 1992 moved to the office of the Official Solicitor to the Supreme Court at 81 Chancery Lane, London WC2A 1DD. The Official Solicitor is a quasi-judicial figure with a long history in English law, primarily concerned with assisting the High Court and the protection of persons under a legal disability, minors (children under the age of 18 years) and mental patients who are involved in legal proceedings. A substantial part of his work involved representing children in disputes about their care, welfare and education, and many of these cases have an international element -- indeed, one of his

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<sup>1</sup>Prepared by Michael Nicholls, Central Authority for England and Wales, March 1998.

<sup>2</sup>Long title: the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children of 1980, sometimes called Luxembourg Convention.



criteria for becoming involved in a case is that it has an international element. Such cases are almost always dealt with in the High Court, so that although the Official Solicitor is independent of the government when carrying out his duties, it was felt that office could bring a good deal of experience to the task of running and supporting a central authority dealing with international child abduction.

The CAU is quite small; only two of its four staff members work full-time on child abduction cases. In the year ending December 1997, the CAU dealt with 369 cases, 164 incoming and 205 outgoing.

The structure set up by the Child Abduction and Custody Act 1985 enables a small number of people to handle a large case load efficiently and effectively. The "Good Practices" of the England and Wales include:

- ◆ A small, single central authority situated in a organization which represents children in legal proceedings;
- ◆ Legal representation immediately available to the overseas applicant at no cost;
- ◆ All cases presented in London by a small group of experienced solicitors and barristers;<sup>3</sup>
- ◆ All cases heard by one of the judges of the High Court's Family Division, of whom there are now 17, including the President of the Family Division;
- ◆ Cases listed for hearing very quickly and the rules limiting adjournments to no more than twenty-one days; and
- ◆ A summary hearing at which oral evidence is positively discouraged.

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<sup>3</sup>The English legal profession is divided into solicitors and barristers. In broad terms, barristers are a referral profession who are specialists in advocacy. Until very recently they had exclusive rights of audience in the High Court (except when it sits in chambers), the Crown Court, the Court of Appeal and the House of Lords. With some limited exceptions, a client cannot approach a barrister directly, but must go to a solicitor who, unlike a barrister, usually practices in partnership with other solicitors, and whose experience may be more general than that of a barrister. The solicitor takes the client's instructions, makes inquiries, interviews the witnesses, instructs the experts, assembles the evidence and lodges the application with the court. He will also select a suitable barrister who is a specialist in the area of law in question to advise him throughout the case and conduct it in court.

## The Child Abduction Unit

In addition to receiving and transmitting requests for the return of children or for exercising rights of access (which are dealt with in detail below) the CAU, in common with other Central Authorities, has a number of other duties. It gives advice and assistance in relation to domestic and international family law to other Central Authorities, the judiciary, the legal profession and anyone else who asks for it. CAU staff members will sometimes ask for help from professional colleagues, other Central Authorities, or Permanent Bureau of the Hague Conference. Occasionally, the CAU's lawyer will appear in court as *amicus curiae*.

In addition to its other functions, the CAU does all it can to advance the interests of children nationally and internationally by talking and writing about the Convention, attending meetings of the Hague Conference and the Council of Europe to discuss the operation of the conventions, reporting interesting cases, co-operating with academic research and working with other government departments and the charity REUNITE. In the United Kingdom there is an inter-departmental working group which the CAU, Home Office, Foreign & Commonwealth Office, police, INTERPOL, immigration and other officials attend to improve interdepartmental cooperation in preventing child abduction and recovering abducted children.

## Applications for the Return of Children from England & Wales

Although the Hague Conference has a suggested model, there is no specified form for making an application to a Central Authority under the Convention. The CAU will accept an incoming application in any form, provided that it contains sufficient information. Requests for advice and assistance are usually made by telephone or by letter, and sometimes come from or through a Member of Parliament.

One important feature of how Convention cases are conducted in the United Kingdom is that the Central Authority does not make the application for return itself. The applicant in all Convention cases is represented by solicitors and barristers in private practice, not the CAU or the Lord Chancellor's Department. Solicitors and barristers, unless instructed privately, are paid in Convention abduction cases by the Legal Aid Board. In access cases under Article 21 of the Convention they may be paid either by the Legal Aid Board or the applicant (see below).

When the CAU receives an application for the return of a child who is in England & Wales, a solicitor is asked to take on the case and if they accept, a letter is sent certifying that the applicant is eligible for free legal aid. The solicitor is then responsible for making the application for legal aid, for taking the applicant's (now his client's) instructions, assembling the evidence, if necessary with help from the CAU, and filing affidavits of fact and about foreign law. He will also instruct a barrister and attend the hearing.

All incoming cases are dealt with in London by a High Court judge of Family Division. The Clerk of the Rules ensures that they are listed for hearing very quickly -- sometimes in two days. Rule 6.10 of the Family Proceedings Rules 1991 limits adjournments to a maximum of 21 days, so that the court exercises control over the progress of the case, and the litigants cannot allow it to "drift".

The applicant's solicitor will often obtain ex parte orders immediately after the issue of the summons for the return order to protect the child, which may include orders requiring the surrender of passports, prohibiting the removal of the child from the jurisdiction or a specific address, or if the whereabouts of the child is not known, a seek and find or seek and locate order, or orders requiring the disclosure of information.

The hearing is what is called "summary", that is, oral evidence is positively discouraged, and applicants are not normally required to attend.

#### Procedure on Return Applications

In the case of *Re W (Abduction: Procedure)* (1995) 1 FLR 878 Mr Justice Wall set out the procedures to be followed in applications for return orders, which reflect the recent practice directions for family business and the summary nature of the proceedings. Indexed and paginated bundles should be produced as should skeleton arguments. If a specific defense is going to be raised, notice should be given by mentioning it in the affidavits or in a separate notice.

#### Outgoing Abduction Cases

When the CAU receives a request for the return of a child from another convention country (an "outgoing" abduction case), it will discuss the case with the applicant or his solicitor, ask them to fill in the questionnaire (which broadly follows the model suggested by the Hague Conference) and make a written statement, if necessary. They will also be asked to provide copies of any court orders. An application will be sent off, with translations if necessary, to the Central Authority of the requested state of states. Thereafter, the CAU will monitor the progress of the case, liaise with the Central Authority of the requested state and the applicant, give advice about English law and do all that it can to help to bring the case to a successful conclusion.

#### Access Cases (Article 21)

In *Re G (a Minor) (Hague Convention: Access)* [1993] 1 FLR 669 The Court of Appeal held that Article 21 of the Hague Convention confers no jurisdiction to determine issues or make orders and, therefore, those wishing to exercise rights of access must apply for a "contact order" under section 8 of Children Act 1989. A circular dated the 5th March, 1993 (reported at [1993] 1 FLR 804) explains that the duty of the CAU in such cases is to find solicitors who are willing to act for the applicant and apply for legal aid (see below). Once solicitors have accepted an

applicant's instructions, they will regard him as their client, and carry on with the case as if it were any other application for contact under the Children Act 1989. Although it is possible to make an application for contact to any level of court that can deal with family proceedings -- that is, the Family Proceedings Court (Magistrates' Court), the County Court or the High Court, it is generally accepted that, because of their substantial foreign element, contact applications arising from Article 21 should be heard and determined in the High Court.

#### Legal Aid in the United Kingdom

The United Kingdom has made a reservation under Article 42 of the Hague Convention in relation to Article 26, but free legal aid (that is not subject to means and merits tests) is available to applicants seeking the return of a child under Articles 3 & 8 [see Civil Legal Aid (General) Regulations 1989 Regulations 13 & 14].

Legal aid is available for those seeking to organize or secure effective rights of access by way of an application for an order under section 8 of the Children Act 1989, but subject to a "means and merits" test.

#### Applications for Legal Aid by Non-UK Residents

Inquiries and applications about legal aid for those not resident in the United Kingdom should be made to the London office of the Legal Aid Board at 29/37 Red Lion Street, London WC1R 4PP.

### Selected Good Practices from Canada

“There is more than one way to skin a cat.”

Sergeant John W. Oliver  
Missing Children's Registry  
Royal Canadian Mounted Police

- ◆ Monitor points of arrival and departure.
- ◆ Promptly enter the child in CPIC and NCIC.
- ◆ Coordinate with other agencies in both countries.
- ◆ Coordinate with Central Authorities on location of child.
- ◆ Promote communication with nonprofit organizations.
- ◆ Get support from airline industry.
- ◆ Use diplomatic pressure in non-Hague cases.

### Background

Canada's Missing Children's Registry (MCR) is a special unit of the Royal Canadian Mounted Police. Established in 1986, the Missing Children's Registry was given the mandate to assist any law enforcement agency to locate and recover a missing child. Also, the Missing Children's Registry is mandated to produce an Annual Report on Canada's Missing Children. This report is released to the Canadian public to keep them aware of the numbers of missing children cases being reported to Canadian police.

The Missing Children's Registry is a member of a program called "our missing children". This program is composed of officials of four Canadian Government Departments, the Royal Canadian Mounted Police, Missing Children's Registry, the Department of Revenue (Customs), the Department of Citizenship & Immigration and the Department of Foreign Affairs and International Trade. This organization is committed to locating and returning missing and abducted children to their proper guardian. (This section is based on an interview by Linda Girdner with Sergeant John W. Oliver, Missing Children's Registry, Royal Canadian Mounted Police.)

### **Monitor points of arrival and departure.**

Travelers can freely exit both the U.S. and Canada. Although this is an essential freedom, it means that systems are not in place to stop abductors and their children from leaving the country. It is the act of entering either country from any other country that is a controlled process requiring proper identification and papers. Cooperation between the U.S. and Canada at their borders is then essential for being able to forestall international abductions between these two countries.

"Our missing children" is an innovative program to identify possible abductors and their children who are attempting to enter Canada. All Canadian Customs and Immigration officers have received special training to identify an abduction in progress, not only at airports, but also at border crossings.

Many border services in other countries work closely with those involved in "our missing children." Several countries have sent officials to learn more about "our missing children" as a possible model that they can use. It is estimated that approximately 600 abductions to Canada from the U.S. have been prevented since the inception of this program.

The Customs and Immigration officials at border crossings look for specific clues and characteristics that indicate an international abduction in progress. They already have descriptive information about missing children and their abducting parents in a number of cases, provided by MCR. In addition, within minutes they can check descriptions of a suspicious adult and child by computer with MCR.

Similar to the U.S., law enforcement officers in Canada can only stop someone from leaving the country if they have a warrant for the abductor's arrest or a court order to recover the child. A warrant for the abductor's arrest does not give law enforcement the authority to recover the child. For that purpose, they need an apprehension or pick-up order. The apprehension order enables provisions of the custody order to be enforced, such as prohibiting the parent from removing the child from the jurisdiction or requiring the other parent's permission to travel. If the apprehension order is issued from the court with proper jurisdiction and the information can get to the RCMP detachment at the airport quickly enough, the RCMP can stop the plane and pick up the child.

The contact between officers of the Royal Canadian Mounted Police and the U.S. Immigration and Naturalization Service (USINS) is essential in preventing abductions from Canada to the U.S. For example, the RCMP officer faxes copies of orders to USINS contacts, who then issue them quickly to other immigration, customs, and border patrol officers on the U.S. side.

### **Promptly Enter the Child in CPIC and NCIC.**

The Canadian equivalent to the National Crime Information Center (NCIC) is the Canadian Police Information Centre (CPIC). The Missing Children's Registry has the authority to enter a child as missing in both the Canadian and the U.S. systems. Although the systems do interface, American law enforcement officers do not routinely query the CPIC. Therefore, it is important that the information be on both systems.

In an abduction case from the U.S. to Canada, the Missing Children's Registry might receive a call from the National Center for Missing and Exploited Children, for example, detailing information about a missing child. To prevent delays, the child's information can be entered into the NCIC and CPIC and the whereabouts investigated prior to receiving a Hague application.

### **Coordinate with other agencies in both countries.**

To gain cooperation from USINS to apprehend an abductor who has entered the U.S. from Canada, the RCMP must convince USINS that the person is fleeing a criminal offense and, therefore, should be considered an illegal alien. Canadian law enforcement must already have a criminal charge against the person and a warrant for his or her arrest. This must be accomplished quickly, so that there is a chance to apprehend the abductor when he or she deplanes or is waiting between flights. Some U.S. Immigration officers accept this as sufficient basis for stopping someone, whereas others do not. Time is of the essence in these cases. For example, one parental abductor who landed at LaGuardia Airport was able to escape with the child to the Caribbean, because the immigration officer wanted to discuss the issue with INS legal consul.

### **Coordinate with Central Authorities on location of child.**

In Canada, each province has a separate Central Authority under the Hague Convention, which is located in the provincial Attorney General's office. At the request of the Attorney General's office, the Missing Children's Registry will get involved in a case. This generally is when the whereabouts of the child are unknown. Although the Hague application can be filed without knowing the exact location of the child, the case cannot proceed until the child is found.

To gain cooperation from law enforcement to locate a child in a Hague case, it helps to have the parent's information on NCIC as well as the child's. This requires that criminal charges be filed against the parent. The Hague Convention is a civil remedy and many Canadian judges frown upon criminal charges being made against a parent in a Hague case. However, some cases would not be able to proceed to a judicial determination on the return of the child if criminal charges did not exist to facilitate finding the child. After the child is located, law enforcement informs the Central Authority. Often the child is picked up at the point when the Hague case is ready to proceed. The criminal charge may or may not be dropped. If the parent has entered the country illegally, then dealing with the immigration status is the fastest way to proceed. The parent and child may be returned without needing a Hague proceeding.

### **Promote communication with nonprofit organizations.**

The mandate of the Missing Children's Registry includes communicating with nonprofit organizations, such as Child Find of Canada. The Missing Children's Registry has established specific criteria that nonprofit organizations must meet to be recognized by MCR. One requirement, for example, is that the organization must provide written recommendation from local law enforcement. Other criteria include being incorporated as a not for profit organization, supplying a copy of an annual financial audit, etc. Currently only five organizations fit the criteria.

The nonprofit organizations play a critical role in staying in communication with the left-behind parent, which is not the responsibility of the Missing Children's Registry. The nonprofits also assist the Missing Children's Registry in recovery and reunification, so they are a major partner in the successful transition of the child to the left-behind custodial parent.

### **Get support from airline industry.**

Canadian carriers voluntarily cooperate with the RCMP in providing passenger information. Up to 24 hours after a flight, airline ticket agents provide the information upon the request of the investigating officer. After that the passengers' information is deleted from the agents' computers and a court order would be needed to physically search for the tickets.

Canadian air carriers provide free transportation back to Canada for a left-behind parent or authorized adult and the recovered child from anywhere in the world as long as travel is on Canadian carriers. International flights can be very expensive and beyond the means of many parents. This humanitarian act on the part of airline industry speeds the return of many children.

If parents have to wait to raise or obtain the funds for travel to recover their children, other obstacles could come into play. If the child is still with the abducting parent, that parent might flee with the child. A child from another country or another state located in an American state might be placed with the local Department of Social Services (DSS) if there is flight risk or if the abducting parent is possibly abusive. If the left-behind parent or other authorized adult is not able to recover the child in a timely way, the child is left longer with strangers, which then adds to the trauma of the abduction. In addition, after 24 - 48 hours (varying by state), DSS may be mandated by child protection laws to take custody of the child. This could further delay the child's return and reunification. Due to the cooperation of Canadian airlines, Canadian children can be promptly returned without extra costs.



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**Use diplomatic pressure in non-Hague cases.**

Canada regularly uses diplomatic representation to seek the return of children who have been abducted to countries that are not parties to the Hague Convention. The Canadian counselor officials of the Canadian Embassy will contact their counterparts in the government of the country to which the Canadian child was abducted to attempt to facilitate the return of the child to Canada.



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## **Chapter 5**

### **Conclusions and Recommendations**



## CONCLUSIONS AND RECOMMENDATIONS

### International Child Abductors: The Abductor Most Likely to Succeed

Unlike in domestic abductions,<sup>1</sup> the majority of children who are abducted to or retained in another country are not recovered. Most are located, but they are not returned. Therefore, the most important step in addressing the problem of international child abduction is prevention. However, many of the best preventive measures are ones that must be issued by a judge in a court order. Judges are often hesitant to place restrictive measures on a parent who has not abducted a child and may never do so. They certainly do not want to discriminate purely on the basis of a parent's country of origin in ordering measures to prevent an abduction or retention. Judges often are unaware of the frequency of international abduction and the difficulty of locating and recovering abducted children from other countries. And some naively believe that the parent before them would not knowingly and willingly defy them by violating the court order.

But concern about a possible abduction does not begin with the judge. Parents need to be aware of the risk profiles of abductors and abduction planning activities. Although these characteristics describe what abductors are like and what they do, the profiles and planning activities alone cannot predict with certainty that any specific individual will abduct. Despite this caveat, it is important for parents, who usually know the other parent better than anyone else, to be aware of "red flags." If they suspect that their child is at-risk of being abducted by the other parent, they should share these concerns with their attorney. It is the attorney's responsibility to present evidence to the court in support of a request for specific preventive measures.

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<sup>1</sup>The National Center for Missing and Exploited Children reported that 83.8% of all their family abduction cases between 1/1/90 and 6/30/98 resulted in the children being recovered. This is more than twice the recovery rate of international abductions as indicated by the left-behind parent survey, described in Chapter 2.





## Risk Profiles for Abduction

In a study conducted contemporaneously with this one, researchers sought to identify the risk factors for abduction. Abductors had three characteristics in common with one another: 1) they tended to disregard the value of the other parent in the child's life; 2) they had children who were young or easily influenced, and 3) most had support from others in carrying out or continuing the abduction. In that study, parents with ties to another country were identified as one of six risk profiles of abductors. Other profiles included parents who threatened abduction or abducted previously, parents who had a fixed belief that the other parent had abused the child and had support for this belief from others; parents who were sociopathic or paranoid; and parents who felt disenfranchised from the system, including many impoverished parents, battered women, and immigrants. Many parents, including those in the international profile, fit more than one profile.<sup>2</sup>

Most international abductions from the United States are committed by parents who have ties to the country to which they abduct the child, as the left-behind parent survey indicated in Chapter 2. The profile that emerged from the study of risk factors sheds light on the psychological and family dynamics of many international abductors (Johnston and Girdner, 1998). The breakup of the marriage, often with an American spouse, was experienced as a painful humiliation for the foreign parents<sup>3</sup> who abducted. They reached out to their extended family at a time when they felt very much in need of support and a return to their cultural roots. They tended to idealize their family and homeland and became critical and disdainful of American culture, from which they had grown alienated. This strongly polarized view led them to see much of American culture as asserting a bad influence on their child, whereas their own culture held the promise of good influences. Taking the child back to their home country enabled them to reject the child's dual heritage and gave priority to their culture in the child's life. Their family back home often offered to help them and their children emotionally and financially during this difficult transition in their lives (Johnston and Girdner, 1998).

The risk profile describes the characteristics of many international abductors. Not every international abductor fits all these criteria, nor are all parents fitting these criteria necessarily going to abduct. However, caution should be taken if abduction risk appears to exist, especially if planning activities are also identified.

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<sup>2</sup>For more information about the other risk profiles and promising interventions, see especially chapters 5 and 6 of Johnston, J. and Girdner, L. *Prevention of Family Abduction through the Early Identification of Risk Factors*, Final Report, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C., pending.

<sup>3</sup>The term "foreign parent" is used here to refer to parents with ties to the other country, even if that parent had become a U.S. citizen or held dual citizenship.



## Abduction Planning

In the survey of left-behind parents, we asked them to identify retrospectively the planning activities engaged in by the abductor (see Table 23 on page 2-28). To gather further data on planning activities, we asked several experienced practitioners<sup>4</sup> to answer a brief questionnaire.

All of the attorneys were familiar with abduction cases that were preceded by the abductor making threats to abduct or retain the children. Three-quarters or more of the attorneys reported that they were familiar with cases that involved the abductor keeping the child late after a visit prior to the abduction; gathering, destroying or hiding documents; sending money or gifts to family or friends in the other country to keep for the abductor; and saying he or she wanted the children to visit relatives in the other country. Between half and three-quarters had seen cases where the abductor saved money or waited for expected cash prior to abducting; liquidated assets; quit or changed jobs; moved residence; made a preparatory visit to the other country; received visits from family or friends from the other country; and applied for a visa or passport for the child from the U.S. State Department or the embassy of the other country. Less common in their experience were parents who made frequent trips to the other country; contacted or joined a women's underground or men's group; changed religion or joined a sect; and had plastic surgery, grew a beard or otherwise changed appearance.

Some attorneys raised other planning activities undertaken by abductors. Some were behaviors relating to the legal system, such as abductors dropping their attorneys and going pro se; defying court orders; making themselves unavailable for service of process; and testing the "system" to see how far they can go. Others brought up financial strategies, such as emptying bank accounts; fraudulently running up bills; and diverting funds for several years. Additional strategies mentioned by the attorneys included the abductor changing his or her name; obtaining multiple passports; renting property in the other country; forging documents in anticipation (such as passports and a travel agreement between the parents); notifying employer of sabbatical or leave of absence; planning a "family trip" for extended visit to the other country; and frequently telephoning family in the other country. Finally, behaviors some mentioned as additional indicators include general obnoxiousness; stalking or conducting surveillance on the other parent; harassing the other parent through phone calls or letters; enlisting the children in fooling the left-behind parent; trying to raise issues of sexual or physical abuse in the custody matter to justify the abduction; and using a pretext of reconciliation.

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<sup>4</sup>This component was added late in the research project. The samples were kept very small (seven domestic relations attorneys and five prosecuting attorneys), so as not to require a review by the Office of Management and Budget of the data collection instrument. Such a review could not have been accomplished within the time frame of the project. Although the samples are tiny, respondents were basing their answers on their caseloads that together exceed the sample size of the left-behind parent survey. Still these findings should be considered exploratory in nature.



When asked which planning activities they found *most common*, the top three were keeping the child late after a visit prior to the abduction; making threats to abduct or retain the child; and applying for a visa or passport for the child from the State Department. The *most reliable* indicators of an abduction being planned, according to these attorneys, are the abductor making threats to abduct or retain the children; applying for a visa or passport for the child from the State Department; liquidating assets; sending money or goods to family and friends to keep for the abductor; and saying they wanted the children to visit the relatives in the other country.

How do the responses of these few civil and criminal attorneys compare with those of the left-behind parents themselves? Certainly, threats are an important indicator. Four-fifths of the left-behind parents reported that the abductor had threatened that they would never see the child again. According to the left-behind parents, other common actions taken by the abductor in planning the abduction were saving money or waiting for an expected cash payment; gathering, destroying, or hiding legal documents and records (e.g. birth certificates, passports); and liquidating assets.

Attorneys and judges need to do a better job at helping parents protect their children from abduction. They need to take threats of abduction seriously, recognize the risk profiles of abductors, and the activities that often are involved in abduction planning. There is no instrument that will predict with certainty that a parent will abduct, just as there are no easy reliable checklists for determining the best interests of the child. However, when the abduction is likely to be to another country, the stakes are extremely high. If abduction risk exists and the likelihood of a recovery is not good, then preventive measures are indicated. If the likelihood of recovery is very good, then perhaps restrictive preventive measures are not as vital unless the abduction risk is very high. But, right now, there are very few places in the world where the likelihood of a prompt recovery is good, even from most Hague countries.



## Recommendations

### **Judges Should Order Preventive Measures Routinely and Vary More Restrictive Measures Depending on the Level of Risk and the Likelihood of Recovery**

Specific recommendations to judges regarding prevention include:

- In the custody order specify that the child cannot be removed from the state or country without authorization.
- Prevent issuance of the child's passport or require that the parent's and child's passports be surrendered.
- Order the at-risk parent to post a bond which would be released to the left-behind parent in the event of an abduction.
- Order supervised visitation and/or no overnights with the child to reduce flight risk.
- Condition visitation or travel with the child to another country on the at-risk parent obtaining a “mirror” order from the foreign court, enforceable in that country, which parallels the provisions of the U.S. order.
- Order the parents to counseling or mediation with someone who can help them address, in a culturally sensitive way, the issues raised by the ending of their marriage, their child’s mixed cultural heritage, and how to parent from two households, perhaps at great distances from one another.

### **Professionals Handling Parental Abduction Cases Should Receive Further Training**

Specific education and training recommendations include:

- Training for law enforcement and prosecutors regarding *immediate* action required to be taken in cases of suspected international child abduction (e.g., entry into NCIC, U.F.A.P. warrant issuance, Hague application, contacting State Missing Children's Clearinghouse). This should include training to all “front line” personnel, including patrol officers, support staff and investigators.
- Training for judges and attorneys regarding preventive measures which can be taken in cases where parental abduction is feared (e.g., supervised visitation, bonds), and guidelines to encourage issuing prompt and enforceable custody and visitation orders and include warnings that violation of the order may be a criminal offense and punishable by imprisonment.





- Judicial training in all Hague countries regarding the implementation of the Hague Convention on the Civil Aspects of International Child Abduction, as well as other inter-country agreements regarding child custody.
- Also recommended is in-depth training for all professionals which highlights:
  - the widespread nature of the problem of parental abduction;
  - the specific difficulties faced in recovering children in cases of international abduction;
  - the devastating impact that the abduction can have on the child; and
  - maintaining supportive contact with left-behind parents.
- Professionals who could benefit from training include law enforcement and prosecutors (local, state and federal), attorneys, judges, government agency personnel (schools, child protective services, missing children's clearinghouses, U.S. Department of State, U.S. Immigration and Naturalization Service, U.S. Customs), family service and missing children's organizations.
- Where possible, training curricula should incorporate the experiences of left-behind parents, both as writers and presenters.

### **Changes Should be Made to Improve the Efficacy of the Hague Convention on the Civil Aspects of International Child Abduction across Countries**

Recommendations include the following:

- Issues relating to the lack of efficacy and uniformity should be raised at the next special meeting of party countries at the Hague.
- A multinational nongovernmental group, including parents, attorneys, researchers, and missing children's organizations, should be convened to discuss problems with the Hague Convention and how to overcome them.<sup>5</sup>
- Two-thirds of Central Authorities are located in Departments of Justice and have at least one attorney on staff. Other countries should consider this model.

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<sup>5</sup>This idea originated with Lady Catherine Meyer and is being implemented by her in cooperation with the National Center for Missing and Exploited Children. The first meeting is planned for September 15-16, 1998 in Washington, D.C.



- Current efforts to educate attorneys and judges and to recruit pro bono attorneys in the U.S. are piecemeal solutions without long-term benefits. The U.S. should consolidate Hague proceedings in one location before a knowledgeable judiciary with representation provided to left-behind parents by an experienced panel of attorneys, similar to the United Kingdom model. Alternatively, United States Attorneys (i.e., federal prosecutors) could be authorized to file Hague return petitions in federal courts. These changes would expedite Hague proceedings, result in more uniform decisionmaking, and increase the prompt return of children abducted to or retained in the U.S.
- Other countries should consider similar models to the United Kingdom's. Consolidating cases in a centralized location can help prevent local bias and allow decisions to be made by judges with experience in Hague cases. This will also alleviate the problem of Hague cases being treated as custody cases by inexperienced local judges.

**The U.S. Department of State, Office of Children's Issues should do a better job in assisting left-behind parents to bring abducted children home from both Hague and non-Hague countries.**

Dissatisfaction with the performance of the U.S. Department of State, Office of Children's Issues was expressed by many left-behind parents as well as a number of professionals in the field of missing children. Many of their complaints related to the functioning of the office. Recommendations that may improve performance include:

- Make the Director of the Office of Children's Issues a nonrotating foreign or civil service position rather than a rotating position. With a new director every two years there is a high learning curve and a small window of opportunity to advocate for the resources needed for the office and to make the changes in staff responsibilities necessary for improving performance.<sup>6</sup>
- Increase the number of personnel<sup>7</sup> to ensure a better staff-to-case ratio; train staff to be more pro-active in cases; provide more direct access for parents to caseworkers (less voice mail); and institute procedures requiring increased periodic contact (initiated by State Department personnel) between staff and the left-behind parent. Consider inviting former left-behind parents to brief staff on the type of contact that would be helpful.

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<sup>6</sup>This is not a criticism of any individual director. Each has worked hard to make headway during their term. It is the structure of the position and its short-term nature that works as a barrier to greater progress.

<sup>7</sup>More hiring of staff is expected, due to the expansion of responsibilities of the U.S. Central Authority once the Hague Convention on Intercountry Adoption is enacted. It is not known, however, how this will impact the attention given to parental abduction cases.



- Serious consideration should be given to transferring the full responsibilities of the U.S. Central Authority under the Hague Convention to the U.S. Department of Justice. This would be in line with the majority of other Central Authorities. The U.S. Department of Justice could allocate direct case management of both incoming and outgoing cases (Hague and Non-Hague) to the National Center for Missing and Exploited Children (NCMEC), as the State Department currently does with incoming Hague cases. Such a change would result in a more child-focused advocacy approach which would be consistent with the mission of the Missing Children's Program in the U.S. Department of Justice and NCMEC, but which sometimes appears inconsistent with State Department's diplomatic mission.
- Make efforts to recruit foreign diplomatic personnel (from foreign embassies in Washington, D.C.) to serve on an informal "working group" committed to overcoming barriers which prevent the resolution of these cases and encourage foreign-based U.S. diplomats to establish similar informal groups in other countries, especially those with high numbers of abductions from or to the United States;
- Continue efforts to increase the number of party countries to the Hague Convention on the Civil Aspects of International Child Abduction.
- Be more willing to use diplomatic pressure or extradition to resolve abduction cases, particularly in non-Hague cases and Hague cases from countries from which there are few returns.
- Parents should be better assisted in finding low-cost translation services for the documents accompanying their Hague application or foreign court proceeding.

#### **Parents Should Have Access to Affordable Attorneys and Advocates**

The cost of attorneys (both in the U.S. and in foreign countries) was extremely high for most parents. Very few had access to free legal assistance, either in the U.S. or the foreign country. Recommendations include:

- Establish or expand pro bono and legal services programs for parents in cases of international child abduction;
- Use volunteers from Court Appointed Special Advocate (CASA) programs (or similar child advocacy programs) to work with state clearinghouses and nonprofit organizations to assist left-behind parent in accessing services and communicating with law enforcement, prosecutors and others. These volunteer advocates would also work to ensure services for the child after reunification.



- Continue support of the existing International Child Abduction Attorney Network (ICAAN), but expand its membership to attorneys in other countries, so that parents in both incoming and outgoing cases can receive pro bono or low cost legal representation.

### **Cooperation Across Agencies and Borders Should be Increased**

The return of a child in a case of international parental abduction requires a high level of cooperation among different government agencies and organizations (police, courts, social services, foreign relations), as well as among different governments themselves. To enhance this cooperation, the following efforts should be continued or considered:

- Enhance the inter-agency cooperative effort among those agencies frequently involved in cases of international child abduction. Currently, an International Parental Abduction Subcommittee Task Force exists with representatives from the Department of Justice (Criminal Division, Office of International Affairs; Immigration and Naturalization Service; Executive Office of the U.S. Attorneys; INTERPOL; OJJDP; FBI (including Legates, Special Investigations and Initiatives Unit); Department of State (Office of Children's Issues; Overseas Citizens Services; Legal Adviser-L/LEI); and Department of Treasury (U.S. Customs).<sup>8</sup> This task force is responsible for identifying problems and working toward solutions.
- Arrange for certain state offices that are working well with neighboring countries to be the designated agency to handle all cases with that country.<sup>9</sup> This would centralize knowledge and expertise, build on existing relationships with foreign counterparts, and more efficiently secure the return of children to and from those countries. The California Deputy Attorney General's Office in San Diego (see pages 4-36 to 4-44) could be assigned cases between the U.S. and Mexico and the New York State Missing and Exploited Children's Clearinghouse (see pages 4-14 to 4-24) could handle cases between the U.S. and Canada. Such an expansion of caseload would also require commensurate funding increases.

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<sup>8</sup>The Subcommittee on International Child Abduction of the Federal Task Force on Missing and Exploited Children submitted its report to the Attorney General in April 1999. An interagency working group, along with a policy group consisting of high-level representatives of the State and Justice Departments, will continue efforts, begun by the Subcommittee, to improve federal responses to international child abduction.

<sup>9</sup>This recommendation was offered by Patricia Hoff, Esq., legal consultant to the project.





## **Some Existing Laws and Procedures Should be Changed**

A number of current regulations create obstacles which make the location and recovery of abducted children very difficult, and in some cases make the abduction easier to accomplish. Changes which are recommended to these current laws include:

- Revision of existing U.S. departure regulations to require that adults accompanying minors exiting the country must show proof of permission from all parents or guardians; or a valid court order indicating that they alone can give permission.
- Changes in current rules regarding issuance of passports to minors to require that all parents or guardians give permission, unless a current court order specifies that permission of only one parent is required.

## **Support Groups and Networking Opportunities for Parents Should be Created**

Numerous left-behind parents reported feeling isolated. Other parents were interested in providing help to other left-behind parents. Recommendations include:

- Establishment or expansion of national, regional and local support networks for parents who are left-behind in cases of parental abduction. These efforts could include:
  - A “buddy” program which pairs a parent whose child was previously abducted (and may or may not have yet been recovered) with a parent whose child has recently been abducted to the same country;
  - Support groups for parents who have children abducted to the same country or countries (e.g., Hague countries; Islamic countries).
  - An Internet Listserve for left-behind parents.



### References

Johnston, J. and Girdner, L. (1998) Early identification of parents at risk for custody violations and prevention of child abductions. Family and Conciliation Courts Review 36, 3, 392-409.

