

## RESPONSE TO INTERNATIONAL PARENTAL KIDNAPPING: CRAIG STEIN

### Testimony Before Senate Judiciary Committee - Hague Convention: **International** Child Abductions

Mr. Chairman, it is a privilege and an honor to be asked to speak to you and your committee today concerning some of my experiences with the implementation of the Hague Convention on **International** Child Abductions. I understand that your Committee is especially interested in the interface between the Justice Department and the individuals most effected by these unfortunate cases, the left behind parent. I believe this is a very important matter that needs immediate attention and I am pleased that your Oversight Committee is reviewing this issue.

So that you will understand my perspective on these matters, I am an attorney in private practice. I have a background in **international** law and have taken on a number of these child abduction cases, both incoming and outgoing, usually on a pro bono basis, over the past few years. No two cases are alike. The main differences depend largely upon the country to which the child has been abducted from or to, and the attitude of the absconding parent. Although the laws implementing this aspect of the Hague Convention have now been on the books for several years, you should understand that this Treaty is still a work in progress. Judges in the United States and the private bar are continually gaining experience with this Treaty. However, its acceptance, as a tool to effect a speedy return of a **kidnapped** child can no longer be denied. Nevertheless, those of us who take on these cases can state with certainty that while the civil aspects of this law are being refined and utilized on an increasing basis, the criminal side of the enabling legislation has not been used to its fullest potential. Indeed, I can state with certainty that it is the feeling among attorneys familiar with these cases that it is not worth the effort to even bring these cases to the attention of the federal law enforcement agencies as no useful action will be undertaken. Frankly, this is unfortunate. As you have heard through Mr. LeBeau's testimony, one of the most helpful tools he had in his effort to have his children returned was the pending indictment against the absconding mother. Indeed, from my experience, it is my opinion that having an indictment pending in the United States tends, at a minimum, to catch the attention of those authorities overseas who are charged with enforcing the Hague Convention in their respective countries.

I do not want to belabor the problems individuals have faced in getting the appropriate federal authorities to institute criminal proceedings in these matters. Rather, I would like to spend the few minutes I have in a constructive manner. In short, here are what I perceive to be the problems.

(1) There is no one designated either in Washington or in those US Attorney's offices which appear to experience a greater proportion of these cases who is specifically charged with enforcing Hague Child Abduction proceedings. If there is a person in charge, those of us who need to know who that person might be are in the dark. (2) There has been little or no training within Justice or the respective U.S. Attorneys offices about the procedures that should

be implemented in these matters. (3) There are no written guidelines in the Justice Department or the various U.S. Attorney's offices to handle these matters. (4) The review and handling of these cases appears to be accomplished in an ad h manner. There is no discernable procedure or philosophy in carrying out the relevant statute.

Why do these problems persist? In my opinion, there are a variety of factors that come into play. First, there is a natural reluctance of a prosecutor to take cases from "the public" rather than a law enforcement agency. Unlike other crimes, however, the most valuable resource in parental **kidnapping** cases is the left behind parent. Therefore, this hesitancy must be addressed and overcome. Second, because no one individual at Justice is responsible for these matters (or accountable for that matter) there is no coordinating effort, no one person to look to for assistance and no centralized training program. Third, there is a perception that the criminal enforcement mechanisms do not assist in bringing back children. However, there is no empirical evidence to substantiate this theory because, thus far, the criminal laws have not been enforced. I would argue that indictments should be brought in most instances. Then, depending on the circumstances, how that indictment is eventually handled or resolved will depend upon the cooperation of the absconding parent in returning and the sanctuary country in cooperating with our efforts to have children returned.

Finally, what should be done to address these problems? I believe the answers are quite simple. Indeed, I came here today not to criticize any individual or agency, but rather to help fit what can be an important tool in the efforts to return missing children. First, The Department of Justice should designate an individual to oversee these cases. Because the number of cases is on the rise, I believe this should be a full time position. Second, this person should also establish a training program for Assistant United States Attorneys in those Districts that are experiencing more than a random case of **international** parental **kidnapping**. Third, in each such District, the United States Attorney should be required to designate an AUSA in his or her office to handle these applications. It should clearly be understood, however, and therefore the policy of the Justice Department that the efficacy of bringing criminal proceedings in these matters is not a matter for debate that would sideline these cases.

Rather, we should explore the efficacy issue after a year or two of experience is gained in bring indictments and prosecutions.

I have not even addressed the follow-through, or lack thereof, in prosecuting these matters. Perhaps that is a subject for another day. For now, it is enough if, through your committee and these hearings, we can work together with the Department of Justice to insure that the criminal aspects of the law implementing the Hague Convention on **International** Child Abduction are vigorously enforced.

Thank you for your time and attention. I would welcome any questions you might have concerning these matters.