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BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE**

**OVERSIGHT OF THE JUDICIARY COMMITTEE UNITED STATES SENATE CON-
CERNING THE JUSTICE DEPARTMENT'S RESPONSE TO INTERNATIONAL
PARENTAL KIDNAPPING**

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Mr. Chairman and Members of the Subcommittee

I am pleased to appear before the Subcommittee today to address the important topic of international parental child abduction.

Role of the Department of State

As you know, Mr. Chairman, this is a topic that has a number of both criminal and civil aspects. Although the focus of the hearing today is on the Department of Justice's response, the Department of State is also seriously involved in this problem, in a number of ways. By way of background, therefore, I would like to give you an overview of the Department of State's involvement in this problem.

First, and most significantly, our concern about international child abduction is an extension of our responsibility and concern for the welfare of American citizens who are overseas or involved in transnational problems.

There is no greater responsibility than the welfare of our children. The protection of Americans abroad, including those children victimized by international parental child abduction, is of the highest priority to the Department of State. Matters involving the welfare and custody of children are some of the most difficult and emotional cases with which we must deal. When a parent abducts, or wrongfully retains, a child from his or her home, and prevents the child from having a relationship with the other parent, the trauma to the child is immediate and compounded each day the child is not returned home.

As a corollary to our concern -for the welfare of Americans in foreign or transnational situations, the Department of State is also responsible for leading and coordinating United States participation in relevant international organizations, such as the Hague Conference on Private International Law. This is the organization that developed the 1980 Hague Convention on the

Civil Aspects of International Child Abduction, to which the U.S. became party in 1988. The Convention provides a civil legal mechanism in the country where the child is located for parents to seek the return of, and access to, their child. It applies only to cases where children resident in a Hague Convention country have been abducted to, or wrongfully retained in, another country party to the Convention.

To implement this Convention, and to focus on other relevant efforts of the Department of State on behalf of children, the Bureau of Consular Affairs created an Office of Children's Issues in 1994. This Office not only acts as the Central Authority for the Convention in the United States, but also tries to assist left behind parents of children abducted to other countries, that do not belong to the Hague Convention. This Office would also be the Central Authority for the Hague Convention on Protection of Children and Cooperation In Respect of Intercountry Adoption, if the Senate gives its advice and consent to ratification.

The responsibilities of the Department of State that are relevant to international child abduction also include those involving passports and travel from the United States. Parents may ask that they be notified if the other parent applies for a United States passport for their child, or, if they have a supporting court order, they may prevent issuance of a passport to a child without their consent.

Finally, the Department of State also plays a role with respect to the criminal aspects of international child abduction by virtue of its role with respect to international extradition matters. In this area, we coordinate very closely with the Department of Justice, of course, since the Department of Justice has the lead role in most operational respects.

Overview of International Child Abduction

The problem of international child abduction can be both tragic and complex. Even within the United States, custody battles over children can be devastating for all concerned. Translated to the international plane, every problem can multiply, and the parent victim can be faced with significant additional complication, difficulty, and expense.

The best means of protecting children from the harmful effects of international parental child abduction is prevention: through the deterrent effect of legal mechanisms, and through education and understanding of the steps that can be taken to make abduction more difficult in the first instance, so that fewer successful abductions occur. Second, we must give attention to any efforts that can be made to prevent abductors from actually leaving the United States.

International child abductions are often complicated by the fact that many abducted children are from multi-cultural relationships. They are often citizens of both the United States and the country to which they were abducted. Ultimately the fate of these children is decided by

the courts of the countries to which they have been abducted or in which they have been wrongfully retained. Often custody orders entered into by US State courts are not enforceable outside our country. Even when everyone involved is a US citizen, these cases are often difficult to resolve once the child has been removed from the United States.

Thus, once the abductor and child are outside the United States, the only avenue for return of a child, apart from a voluntary resolution, is likely to be legal proceedings under the Hague Convention. If the abductor is in a non-Hague Convention country, there may be only limited legal recourse, if any.

A Hague Convention proceeding does not decide custody; instead, it decides in which country custody determination should be made. Basically, the Convention is aimed at using abduction as a means of forum-shopping, by providing that the courts in the country to which the child is abducted should, with very few and limited exceptions, return the child to the country of habitual residence without considering the merits of the custody dispute.

Overall, the Convention is a success story. In the first ten years that the United States has been party to the Convention, proceedings have resulted in the return of over 2,000 children to the United States. Further, we believe the existence of the treaty's return mechanism has deterred an untold number of abductions. Approximately 60% of the cases in which we provide assistance are now covered by the Convention. When the US joined the Convention in 1988, only nine other countries were party. Today the Convention is in effect between the US and 53 other countries. We have an active program to encourage countries to join the Convention as the best possible means of protecting children from the harmful effects of abduction. For example, in an August trip to Japan, which is not currently party to the Convention, Mary Ryan, the Assistant Secretary for the Bureau of Consular Affairs, discussed with a Justice Ministry official the benefits of the Convention for both our countries. As we look to improve the Convention's effectiveness, we must remember the many parents who wish that they had even this less than ideal mechanism to seek return of their children.

While the Hague Convention has facilitated the return of many children to the United States, and while it is a vast improvement over the lack of any international mechanism whatsoever, it is not a perfect remedy. There are some bonafide grounds for non-return under the Convention, and in some cases parents or courts have created loopholes even where there should be a return. The world has changed since the Convention was conceived 19 years ago when the majority of taking parents were fathers. Now, 70 percent of taking parents are mothers, and courts in some countries are reluctant to compel children's return to the United States when the mothers face significant obstacles to return, including possible criminal sanctions. There may also be particular problems associated with "wrongful retention" of a child, when there is no actual physical abduction, particularly in certain joint custody situations.

We have identified a number of the biggest obstacles to the effective implementation of the Hague Convention. These include:

- **Locating children:** Many countries, including Mexico and other Latin American countries, Sweden, Norway and Denmark, have difficulties locating children believed to have been taken to their country. The problem in Mexico appears to be primarily a lack of resources and infrastructure, while the problem in the Scandinavian countries may be more of a lack of interagency cooperation and coordination within the country. Often social welfare agencies do not share information with the Hague Central Authority. Other countries have laws that prohibit information sharing among government agencies.

- **Duration of cases:** Although Article II of the Hague Convention calls for expeditious processing of return cases, and specifies that courts may be asked the reason for delay if they have not decided a Hague case within six weeks, the courts in some countries do not proceed in a timely fashion.

- **Non-enforcement of orders:** Many civil law countries do not have effective mechanisms for enforcement of their own civil orders for the return of abducted children. The country may not have any penalty for noncompliance with a court order, may levy only a small fine, or have no authority responsible for enforcing a civil order. In some instances, a left-behind parent may have to hire a designated authority (such as a bailiff) to enforce a civil order.

- **Consent of the child:** The Convention allows judges to refuse to order the return of a child if the child objects to being returned "... and has attained an age and degree of maturity at which it is appropriate to take account of its views." While in the United States we would expect that judges would consider a child of perhaps ten or twelve years old to be mature enough to think independently of the taking parent's influence, we have seen the views of significantly younger children taken into account in some countries. In Germany, for instance, we have seen judges take into consideration the wishes of children as young as five.

- **Undertakings:** The courts in a number of Commonwealth countries, including the United Kingdom and Australia, often require the left-behind parent to agree to extensive "undertakings" (conditions for return) before an order for the return of an abducted child will be issued. These undertakings expand rather than limit the exceptions for return of abducted children under the Convention. Examples have included requiring the left-behind parent to pay the abducting parent's transportation costs back to the United States, providing housing costs once the taking parent returns to the US, and/or furnishing the abductor with an automobile for the duration of custody hearings. In at least one instance, the left-behind parent was required to demonstrate that he had pre-paid a substantial sum to the taking parent's attorney. These undertakings are not provided for in the Convention, have the effect of rewarding abduction and impose additional hardships on the left-behind parent.

Nevertheless, overall the Hague Convention is a significant improvement. Before we became party to the Convention, return to the US of abducted children was approximately 20 percent. Under the Convention about 72 percent of cases result in return or access. The rate of returns from the US to other countries is even higher, approximately 90 percent, including voluntary returns.

This reality offers little comfort to the left-behind parents who have suffered the frustration and anguish of losing contact with a beloved child. Nor does it comfort the traumatized child who has been abruptly wrenched from the arms of one parent and asked in effect to choose sides. That is why we continue to work to improve the functioning of the Convention.

US Federal Response to International Parental Child Abduction

Since the US became party to the Hague Convention in 1988, the Department of State has worked to improve its implementation. The first year we created a new child custody division to coordinate our work in this area. In 1994, we formed the Office of Children's Issues, redoubling our efforts on this important subject and increasing the level of attention it received in the State Department. The benefits of this new office were quickly realized. In 1994, the Office was recognized by the Administration when it won a Vice Presidential "Hammer Award" for reinventing government due to its work to return children home. Our efforts have increased steadily since that time.

The new Office-of Children's Issues saw the need for a comprehensive interagency coordinated response to address the scourge of international parental child abduction — from prevention, to recovery, to reunification. In 1994, it co-hosted, with the American Bar Association, the North American Symposium on International Child Abduction, funded by the Department of Justice, and aimed at improving the operation of the Hague Abduction Convention.

In an effort to coordinate assistance to abducted children and their families, the Office of Children's Issues entered into a cooperative agreement with the Department of Justice and the National Center for Missing and Exploited Children on September 1, 1995, to work together on these cases. While the National Center had always helped us locate missing children, the agreement formalized this arrangement and expanded the National Center's work to include Hague cases in which children were abducted to, or retained in, the United States.

There were other issues needing attention. One was the matter of legal costs. Although the Hague Convention provides that countries will pay the legal fees of parents in Hague return cases, the Convention allows party countries to take a reservation in this regard and the US took that reservation. As a result, some Americans pursuing return of their children under the Convention were receiving free or reduced fee legal assistance in other countries, while foreign parents pursuing return of their children abducted to, or wrongfully

retained in, the US did not receive equal benefits.

At the 1994 intergovernmental meeting of Convention Central Authorities, the US was roundly criticized by other party countries because the high cost of US litigation was effectively denying parents from pursuing Hague remedies in the US. As a result of that criticism, the Department of Justice, in coordination with the Office of Children's Issues, agreed in 1995 to fund the American Bar Association's creation of the International Child Abduction Attorney Network (ICAAN) to expand the pool of attorneys who provide pro bono or reduced fee legal assistance in Hague cases involving children in the United States.

In 1998, the Office of Children's Issues received another award from the Administration as a member of the team, which included the Department of Justice and the National Center for Missing and Exploited Children, that created the family reunification program to help needy parents pay for the costs of returning their children home. We have a robust interagency cooperative effort and are dedicated to using every tool at our disposal.

Despite all the efforts of the Departments of State and Justice to coordinate and cooperate, both the agencies involved and, more importantly, the left-behind parents believed that the US federal response to their cases was not sufficient and that more needed to be done. There were failures in coordination on cases, in part because of the inherent tension between the civil aspects of a case in which the goal is to effect the abducted child's return and the criminal efforts to prosecute abducting parents.

The Senate Foreign Relations Committee invited the Attorney General to testify on international parental child abduction in October 1998. Prior to her testimony, the Attorney General spoke with the Secretary of State and together they committed their two agencies to taking a hard look at how the federal response to international parental child abduction could improve.

The Attorney General and the Secretary of State subsequently formed a Senior Interagency Policy Group to undertake a comprehensive review of the federal government response to international parental child abduction. The Policy Group in turn created a working group. Since they were created, the Policy Group and its Working Group have met at least once a month. The Policy Group, with the input of the Missing and Exploited Children Task Force's Subcommittee on International Parental Child Abduction, prepared "A Report to the Attorney General on International Parental Kidnapping" which the Attorney General submitted to Congress in June. The report outlined the gaps in the federal response and recommendations to improve the situation.

The Policy Group developed an action plan to implement the report's recommendations, wherever possible, and to the extent resources permitted.

The action plan addresses:

- The creation of a comprehensive tracking system for international parental child abduction cases;
- An enhanced role for the National Center for Missing and Exploited Children;
- The strengthening of inter-agency coordination;
- Enhanced diplomatic initiatives;
- Increased education and training;
- Strengthened mechanisms to prevent departure of abducted children and abducting parents;
- Expansion of services for parents and children;
- Coordinated budget and resource estimates.

Implementing the international parental child abduction recommendations will be expensive, having a price tag in the millions, and taking several years. As a core function of the Department of State, the Office of Children's Issues should be funded with appropriated resources. We are concerned about inadequate overall funding for the Department, which may negatively affect our ability to implement the recommendations. ... Additionally, we are pleased that the Senate receded on an earlier effort to zero out funding for the Hague Conference, and want to emphasize the important work that it does and the great amount of value we obtain in fully funding this important organization.

The Bureau of Consular Affairs is on its way to completing the requirement study for the interagency case tracking system. The contractor has had over a dozen meetings with Children's Issues staff and the interagency community that will be using this system. With needed funding, implementation of the first phase of this system is scheduled for this spring. The Bureau has increased the staff of the Office of Children's Issues so that country officers have fewer cases. They will soon be advertising for a management analyst to oversee further development of the comprehensive tracking system, to create accurate statistics on all abduction cases, both to and from the US

The Bureau of Consular Affairs has also expanded the cooperative agreement with the National Center for Missing and Exploited Children to include additional assistance for parents and children in all international child abduction cases. The Bureau recently established a National Center coordinator position within the Office of Children's Issues. The passport custody lookout function currently in Passport Services will be transferred to the Office of Children's Issues in early 2000.

As we seek to improve services to parents, we recognize the need for continuing feedback from our customers. Recently, Children's Issues has had a number of meetings with left-behind parents to receive their input on how we might do things better. One of the new positions in Children's Issues will be specifically devoted to enhancing our service to American citizen customers. We have also established Children's Issues coordinators at our embassies and consulates around the world.

Recently, we have seen an example of how our increased interagency communication has aided the return process. Five children abducted from the US to Syria were returned home following extensive interagency cooperation involving the FBI, Department of Justice, local law enforcement and the National Center for Missing and Exploited Children, efforts coordinated by Children's Issues. Children's Issues initiated numerous conference calls among the relevant organizations, ensuring that the return of these children remained the focus of all US Government efforts. Following excellent work by our Embassy in Damascus, one of the abducting parents was arrested in Syria and all five children were returned using Justice Department "family reunification funds" and State Department repatriation loans.

In closing, Mr. Chairman, in considering the complexity of both Hague and non-Hague abductions, we must remember that these cases are all centered on children and their need to feel secure in their homes and not live in fear of abduction. Thank you, Mr. Chairman, for the opportunity to address the Subcommittee on this important topic for our children and their parents.