

**STATEMENT OF THOMAS A. JOHNSON  
(TESTIFYING AS THE PARENT OF AN AMERICAN CHILD WRONGFULLY  
RETAINED IN SWEDEN)  
BEFORE THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS UNITED  
STATES HOUSE OF REPRESENTATIVES**

**OCTOBER 14, 1999**

**Implementation of The Hague Convention  
on the Civil Aspects of International Child Abduction**

This statement is submitted solely in my personal capacity as an American citizen and as the father of Amanda Kristina Johnson, an American, child wrongfully retained in Sweden. Although I have been an employee of the US Department of State for more than twenty years, I make this statement as a private citizen and do not in any way purport to represent or speak for the Department of State, as will be obvious to any reader. I have taken annual leave to be here today and have not used government resources to prepare this statement.

Before proceeding, I would like to express my appreciation to Congressman Gilman for his commitment to finding ways to prevent and remedy international child abduction and retention abroad, for his willingness as Chairman of the Committee to schedule this hearing to learn how and why the system has failed so many abducted American children and their left-behind parents, and for his personal efforts to help children subjected to this crime and human rights abuse. I am also grateful to Congressman Smith and his staff for their legislative drafting efforts, as well as to other members of the Committee and the House Caucus on Missing Children for their interest. Finally, the dedication and hard work of the Committee's staff in preparing for this hearing and assisting individual citizens on a daily basis merits the admiration and thanks of all left-behind American parents. In the midst of an otherwise shattering experience for all such parents, this Committee's legislative work and other recent Congressional initiatives, despite Executive Branch opposition and obstruction, have been among the few encouraging developments.

Mr. Chairman, the norm for American parents in the vast majority of these cases is no return of the child under the Hague Convention or otherwise, no possibility of gaining extradition of the abductor because the Executive Branch has negotiated one-way extradition treaties, no possibility of enforceable access to or visitation with the child because most foreign legal systems have nothing comparable to contempt of court, and no effective assistance from the US Government, which in fact stands ready to assist the abductor and his/her supporting government through enforcement of foreign child support orders and extradition of American parents who rescue their children.

Mr. Chairman, my daughter's individual case is summarized toward the end of this statement

for the record, but most of the statement concentrates on what necessarily must be the Committee's primary focus: remedial actions that will help all Americans. That said, it is important at the outset to note the human impact of these cases and the truly barbaric conduct of governments such as Austria, Germany, and Sweden that enables their citizens to abduct and wrongfully retain American children with impunity. Amanda has not seen her American family, friends, school, church, and home environment for more than five years. She has several grandparents here, but none in Sweden. She has two baby sisters here whom she has never met, with another due next month, but no brothers or sisters in Sweden. Amanda's abductor could not have succeeded without the Swedish Government's comprehensive financial support and other forms of assistance. And governments such as Sweden that virtually encourage child abduction and retention by their citizens could not succeed without the US Government's silence, refusal to make them pay any price for their treaty violations and human rights abuses, and failure to protect American citizens. That is what this statement is about, together with proposed remedies. In particular, the statement addresses:

- The need to publicize and punish direct foreign government support for the abduction and wrongful retention abroad of American children, in violation of the Hague Convention and international human rights instruments
- The need to publicize and counter foreign legal systems that ensure the complete loss of American children not returned under the Hague Convention and then subjected to foreign custody jurisdiction because these legal systems lack contempt of court and cannot enforce access or visitation (i.e., cannot control the conduct of their citizens or protect the parental rights of American parents in child custody and visitation matters)
- The need for enactment of effective preventive and remedial measures, such as those in the State Authorization Bill of each house (Section 203 of H. R. 241 5 and Sections 201 - 203 of S.886), and for accountability within the Executive Branch concerning the handling of these cases and the obstruction or disregard of all Congressional efforts to help
- The indefensible withholding of documents and information from American parents
- The need for Congress to mandate that the National Center for Missing and Exploited Children (NCMEC) shift from helping foreign parents in "incoming" cases to helping Americans in "outgoing" cases (as NCMEC prefers), hold the case files instead of the Department of State, and play an assertive advocacy role on behalf of American children and their parents; today, left-behind American parents must deal with hostile bureaucrats while foreign parents benefit from NCMEC's superb capabilities at US taxpayer expense.
- The need for Congress to reject the "private custody dispute" disinformation campaign, the two-front war presented to left- behind American parents by the Executive Branch (the threats of extradition and child support enforcement), and the effective abandonment or

“writing off” of American children through State Department closure of their cases

— The harmful conduct of the State and Justice Departments during the past year, as reflected in the Hague Convention Compliance Report to Congress, the Task Force Report to the Attorney General, and opposition to all pending legislation

— The problems of dereliction of duty, dedication to maintenance of the status quo and keeping other governments happy, incompetence, inexperience, and mismanagement within the Executive Branch

— Human rights violations inherent in government facilitation and support of child abduction/retention, and the disconnect between the First Lady and the State Department on this subject

— Essential elements of any credible General Accounting Office investigation and report

— Specific recommended Congressional actions (most of which require only political will rather than tangible resources)

— Specific proposals for improved implementation of the Hague Convention

— a Summary of the Swedish Government System of Abduction and Wrongful Retention of Children (as an example of what the US Government should be drafting and disseminating to all US courts, law enforcement authorities, family law specialists, and the public on each Hague and non-Hague country that facilitates or supports international child abduction and wrongful retention).

— The latest unsuccessful effort to persuade the Human Rights Bureau (DRL) at the State Department to include this problem in the annual country reports on human rights

— a Submission to the United Nations Committee on the Rights of the Child concerning Sweden’s systematic and institutionalized violations of the Convention on the Rights of the Child (as an example of what the US Government should be filing with the Committee as a signatory to the Convention and with the European Commission/Court of Human Rights as a nation whose citizens are being subjected to violations of the European Convention on Human Rights)

## **THE CURRENT SITUATION**

Mr. Chairman, the past year has been a very good one for the abductors of American children. With all too few exceptions, they have enjoyed great success, thanks to the foreign governments that support them in a variety of ways and the US Government that fails to provide

effective assistance to its citizens who are the victims of these crimes and human rights abuses. At the same time, the US Government and courts keep foreign governments happy by generally returning children to foreign parents, thus helping to maintain the status quo. Abductors of American children will continue to succeed, unless Congress takes specific actions detailed later in this statement to:

— establish accountability (e.g., annual abduction and human rights reporting to Congress as proposed in the State Department Authorization Bill)

— require effective preventive measures (e.g., dissemination of reports and advisories on foreign legal systems via the Internet and all other possible means to US courts, family law specialists, law enforcement authorities, and the public)

— promote full compliance by foreign governments with the Hague Convention and other relevant international instruments, and

— ensure remedial measures in response to treaty violations.

Mr. Chairman, it is common knowledge that the loss of a child in any manner is one of the worst events that can occur in a person's life. It is likely that every member of this Committee and its staff has in some way been exposed to such tragedies. The loss of any child for any reason is a terrible thing for all concerned. But government-supported abduction and retention of children is a particularly intolerable way to lose a child, especially when the government concerned does so in violation of treaty obligations relied upon by other governments and their citizens. The fact that the Executive Branch seemingly cannot or will not comprehend is that American and other victims of parental child abduction by foreign citizens are often up against the full weight of the foreign government concerned from the start of a case, even if that government is a Party to the Hague Convention.

Too many Americans, Mr. Chairman, have relied on the Hague Convention to their detriment, with their attention thus diverted from possibly more effective options. The issue is not elimination of the Hague Convention process, since it should be preserved if it gains the return of even one child each year that would otherwise not come home. But the State Department has allowed the Hague Convention to become a one-way street enabling our treaty "partners" to benefit from the consistent return of - children from the United States, many of whom arguably should not be returned because there will be no enforceable visitation for the American parents. These foreign governments generally fail to reciprocate by returning children to the United States, where contempt of court is available to enforce access and visitation for foreign parents.

Mr. Chairman, the US Government has failed to adjust to the reality that the majority of abductions were by fathers when the Hague Convention was negotiated, but, today, an even higher percentage of abductions are by mothers. The overwhelming majority of States Par-

ties to the Hague Convention never changed their domestic law or their cultural beliefs, so that children can or will be taken away from mothers who abduct or wrongfully retain them. The norm facing the United States is abductions by Middle Eastern fathers to non-Hague countries and by European mothers to Hague countries. The latter have conclusively demonstrated that they will rarely treat an American father better than they will treat their own fathers. In short, these European countries may choose to maintain extreme gender and national bias (as seen in Germany's treatment of Lady Catherine Meyer). But they do not also have the right to hold themselves out as respectable States Parties to the Hague Convention and Convention on the Rights of the Child.

The State Department has obligations both to inform Congress, all US courts, family law specialists, law enforcement authorities, and the public about this state of affairs so as to reduce the instances of these persistent Hague violators (i.e., European and other civil law countries) enjoying the benefits of the Convention while denying them to American parents, AND to pressure these countries either to engage in radical reform of their legal and social welfare systems OR to withdraw as Parties to the Hague Convention and the Convention on the Rights of the Child (which has numerous provisions that are violated by government support of abduction and retention). In all too many cases, American citizens fatally rely on the mere fact that a country is a Party to the Convention and presumed to comply with it. The State Department has an obligation to set the record straight publicly and loudly at home and abroad, just as it does country- by-country worldwide with travel advisories covering crime, disease, and terrorist threats. The probable permanent loss of children guaranteed by the legal systems of most Hague (and non-Hague) countries (due to unenforceable visitation) is clearly just as serious as the matters covered in the current advisory system.

Mr. Chairman, it is important, of course, not to lose sight of the fact that foreign governments are the source of the problem. But no one seriously questions that any longer. As discussed below, governments like Austria, Germany, and Sweden are taking good care of their citizens while violating the human rights of Americans with impunity. Why should they unilaterally change? They have been given no incentive to do so by the US Government.

## **IMMEDIATE REMEDIES**

Mr. Chairman, this intolerable and indefensible situation would begin to improve literally overnight, if the Executive Branch took several actions that cost nothing. The first such action is simply to begin publicly telling the truth about these cases. If nothing else, however, the conduct of the State and Justice Departments during the past year has conclusively demonstrated that they will not take such actions voluntarily. Among other things, the Hague Convention Compliance Report submitted to Congress by the State Department violates both the letter and spirit of the statutory reporting requirement in P. L. 105-277, the Task Force Report to the Attorney General is an attempted fraud on Congress that has nothing to do with reality, all pending legislation (Section 203 of H.R. 2415 and Sections 201- 203 of S. 886)

has been subjected to unprincipled opposition without any constructive alternatives suggested, NCMEC has been successfully pressured by the State and Justice Departments into continuing to assist primarily foreign parents at US taxpayer expense with only limited help and information provided to American parents, and to senior State Department official responsible for this area (Assistant Secretary Mary Ryan) has declared in an appalling letter to Insight Magazine that these cases are essentially mere private child custody disputes and that we should be encouraged by a return rate for American children of well under 50 percent. The Ryan letter is particularly insulting to the memory of all abducted and wrongfully retained American children. Consequently, the only real hope for American children and their parents is that Congress will enact legislative directives that:

— require the State Department to submit and widely disseminate to US courts, family law practitioners, and the general public by all possible means (including the Internet) an annual Hague Convention Compliance Report in accordance with the original version of Section 203 of H.R. 2415 (i.e., detailed information including country names on all cases where children have not been returned to the US within 6 months and listings of all Hague Parties that do not have anything comparable to contempt of court in their legal systems to enforce Hague return or visitation orders, that pay legal fees for their abductors at home and abroad, that do not recognize the principle of comity, that have criminal laws directed against left-behind parents who attempt to exercise their custody rights, and so on)

— require the State Department to address family rights and parental child abduction in each country report of the annual human rights reports, in accordance with Section 203 of S. 886 as supplemented by subjects covered in the original version of Section 203 of H.R. 2415 (e.g., whether a country can and will enforce a child's right to have access to both parents even if they reside in different countries, whether a country provides financial support to its abductors, whether a country recognizes the principle of comity and respects the laws and court orders of other countries on custody and visitation, whether a country has criminal legislation that effectively shields its abductors and targets foreign parents attempting to exercise their custody rights, whether statistics show that a country's legal system demonstrates gender or national bias in child custody cases)

— require the State Department to disseminate an interpretation of Article 13b of the Hague Convention to all US courts (with notice to all Hague Convention Parties and announcement at the next Hague Convention Review Conference) that "grave risk" to the child as a basis for non-return includes situations where the child(ren) would be returned to a country with a legal system that has no effective means of enforcing visitation in the United States (or anywhere else) for the American parent or enforcing any other aspect of its civil court orders (i.e., a legal system that has nothing comparable to contempt of court)

— require the State Department to conclude bilateral agreements with the worst offending countries concerning access and visitation

— prohibit the State and Justice Departments from assisting foreign parents in domestic litigation until they uniformly assist American parents in Federal or state court litigation financed by foreign governments and brought to challenge or subvert US court orders

— require the State and Justice Departments to inform all extradition treaty partners that the United States will not extradite its citizens for the offense of parental child abduction to any country that does not extradite or effectively prosecute its nationals for that offense and does not consistently return requested children under the Hague Convention

— require the Executive Branch to transform its contract with NCMEC to process “incoming” cases into a contract for NCMEC to assist only with “outgoing” cases, to transfer all “outgoing” case files from the State Department to NCMEC, and to inform all Hague Parties that NCMEC will no longer assist with “incoming” cases

— mandate that NCMEC take an assertive advocacy role on behalf of American children and parents with BOTH foreign governments and the US Government

— terminate the State Department’s authority under P.L. 104-193 (Section 459A) to conclude reciprocal child support enforcement agreements and require the State Department to inform the states that foreign child support orders should not be enforced in cases where the American parent has no enforceable visitation in the United States or there has been a violation of US law or court orders, Federal or state felonies, failure to return a child under the Hague Convention, and so on.

## **RECENT EXECUTIVE BRANCH PERFORMANCE**

“We cannot push too hard in the Johnson case because that might jeopardize the return of children in other cases.” (Assistant Secretary Mary Ryan)

“I don’t work for the American people, I work for the Secretary of State.”  
(Assistant Legal Adviser Catherine Brown)

“Why are you calling about the Johnson case? That case is closed.”  
(Response to NCMEC by Ellen Conway of the Office of Children’s Issues)

Mr. Chairman, these are actual statements concerning my daughter’s case or child abduction generally made to me or others by State Department officials who are supposed to be responsible for obtaining the return of abducted American children. They will give you some idea of what American parents experience when they deal with the State Department, and why this function needs to be shifted elsewhere, with the Department placed in receivership in this area by Congress in the interim. The first statement is a classic expression of appease-

ment, as discussed below. The second may confirm many suspicions, but was also both honest and sincere, which is precisely the problem. And the third raises the issue of the State Department writing off American children by closing their cases as soon as the foreign government makes a final denial of the US request for return. You know about this matter because the State Department told you that there were only 56 “unresolved” Hague cases in its Hague Convention Compliance Report to you last spring. As a Marine who was trained from Day 1 never to leave anyone behind and as a citizen who admires and supports the MIA effort, I find the bureaucratic closing of our children’s cases particularly offensive. My understanding is that no one, from the President on down, has the authority to write off American citizens, especially our youngest ones.

Today, Mr. Chairman, there is no accountability within the Executive Branch, few preventive measures to educate American courts and law enforcement authorities (let alone the public), no strategy to achieve full compliance with the Hague Convention and other applicable treaties, and no political will in the Executive Branch to take effective remedial measures. The reality is that foreign governments provide far more financial, law enforcement, and other assistance to their citizens and others who abduct or retain American children abroad than does the US Government to the left-behind American parents. Worse still, the US Government provides far more assistance to foreign citizens whose children are in the United States, often with good reason as discussed below, than it does to Americans whose children have been abducted or wrongfully retained abroad. US tax dollars permit NCMEC to assist foreign parents in a variety of ways, while the American parents in those cases generally face extreme gender and/or national bias in the foreign courts concerned, and will not be able to obtain enforceable access or visitation with their children except perhaps in a few common law countries. It appears that the Executive Branch cares only about US compliance with its treaty obligations and is unwilling to take any effective measures to ensure that there are negative consequences for foreign governments that consistently fail to comply with their treaty obligations to the United States and that support, in a variety of ways discussed in this statement, the commission by their citizens of Federal and state felonies against American children and their parents.

Mr. Chairman, in Amanda’s and so many other cases of children abducted and wrongfully retained abroad, the loss has occurred through a combination of Hague Convention violations and other human rights abuses by foreign governments, direct and substantial institutionalized support by these foreign governments for the abduction and wrongful retention abroad of American and other children, and overall conduct by the State and Justice Departments that, as a practical matter, creates a two-front war for Americans and facilitates the successful commission of these Federal and state felonies against American children and their parents. As a parents, all of us are also here because we do not want thousands of additional American or other parents to lose their children, which is a certainty unless Congress takes charge and enacts legislation or takes other actions along the lines suggested below to force the State and Justice Departments to carry out the most fundamental responsibility of any

government: to protect its citizens at home and abroad. Diplomatic and legalistic approaches alone will not work. They must be backed up by demands for reciprocity and a willingness to impose consequences on foreign governments that continue to provide any form of support to those who abduct and retain American children abroad.

In view of those realities, genuine and long-term improvement is unrealistic as long as the State Department remains the US Central Authority under the Hague Convention and otherwise has the lead responsibility for child abduction matters within the US Government. Most left-behind American parents would agree that the State Department has consistently shown that it lacks the competence, commitment, and political will to perform effectively in these cases, that its approach is to compartmentalize these cases at a low level to prevent any impact on bilateral relations, that its principal concern is ensuring that foreign governments have no complaints about US treaty compliance, and that it has no strategy for dealing with foreign treaty violations and no intention whatsoever to do so. In my own case, relatively strong diplomatic notes to Sweden early on were undercut by the American Embassy in Stockholm failing to hand-deliver them, and thus delivering a clear message to the host government. More recently, despite continuing outrages in the case, the State Department has failed to respond to a Swedish diplomatic note of May 1997 or to send other communications with any teeth. Staff shortage is not the problem, since I supplied more than ten single-spaced pages of points from which to draw. While the Swedish Government routinely distributes all Swedish and US Government documents to its citizen who abducted Amanda, Americans are told to file Freedom of Information Act requests. Earlier this year, an inexperienced State Department team spent a great deal of money in visiting the capitals of the worst European violators of the Hague Convention for consultations (including Austria, Germany, and Sweden), but there has been no report to the American parents concerned and no indication of any positive developments from this trip.

The situation for foreign left-behind parents is very different. According to statistics supplied to the General Accounting Office (GAO) by the National Center for Missing and Exploited Children (NCMEC), the combined efforts of the State Department, the Justice Department, US courts, and US law enforcement have ensured that more than 90 percent of children abducted to or retained in the United States in recent years have been sent back to foreign countries. Ironically, that includes virtually 100 percent to some of the worst offending countries, such as Sweden and Austria. Moreover, as explained below, many of these children were brought to or retained in the United States for valid reasons, such as the impossibility of their American parents receiving fair treatment or even enforceable visitation of any kind from the foreign courts concerned. These children should not be sent away from the United States. But they are, because the Executive Branch has failed to educate American courts and family law practitioners about the grave risks (within the meaning of Article 13b of the Hague Convention) of sending them to countries where they will be denied any contact with their American parents unless the foreign parent decides otherwise.

As described below, foreign government support for abduction and wrongful retention of American and other children continues unabated. Because American lawyers and US Government officials continue to have great difficulty in comprehending or even believing the point, it cannot be repeated too often that parents in our position cannot gain legally enforceable access to or visitation with our children in the countries where they are held hostage, let alone the United States, unless the abductor permits it.

In other words, the reality that would be helpful for this Committee and Congress in general to address is that the problem goes well beyond the fact that foreign-governments are violating their treaty obligations to the United States with impunity, refusing to return American children under the Hague Convention, stealing custody jurisdiction from American courts, and awarding sole custody to their citizens who have committed Federal and state felonies. Even at that point, one might reasonably assume, as I did, that the worst case scenario is being a noncustodial parent with only 4 to 6 weeks of visitation in the United States each year. Regrettably, the fact is that most American children are completely and permanently lost to their American parents, families, friends, and home environments.

After years of ignoring or not wishing to believe this reality, the State Department is reportedly contracting for a study to confirm what American parents have been saying all along: judges in European and other civil law countries have no effective means of enforcing their own orders. In nearly all Parties to the Hague Convention, therefore, refusal to grant a United States return request, followed by the exercise of regular custody jurisdiction, means the complete loss of the child(ren) concerned. Accordingly, Mr. Chairman, American parents of abducted children are, in most cases, faced with a clear choice: abandon their children or conduct a rescue operation. For those who make the latter choice, it is hoped that Congress will ensure that they are fully supported by the US Government and that the current practice of subjecting them to a two-front war (e.g., by means of extradition) is terminated.

## **THE PAST YEAR IN PARTICULAR**

Rather than alleging dereliction or incompetence at the State and Justice Departments, it is really only necessary to look at Executive Branch actions and inaction during the past year. Such an examination greatly enhances our credibility and demonstrates more clearly than anything we can say the extent of bureaucratic bad faith, obstructionism, covering up, and devotion to the status quo in this area. The only good news is that now Congress has received the same treatment from the Executive Branch that we have and that the Executive Branch has confirmed everything we have been saying about it. You have been on the receiving end of the same attitude that we experience, particularly with regard to three matters: the State Department's Report to Congress on Hague Convention Compliance, the so-called Task Force Report to the Attorney General, and State Department opposition to proposed legislation.

## **Hague Compliance Report**

In this Report to Congress in Spring 1999, the State Department violated both the letter and spirit of P.L.105-277, the legislation that established the Hague Convention reporting requirement, by submitting an inadequate and unacceptable Report that itself makes the case for a renewed and more comprehensive reporting requirement. Congress asked for a listing of all unresolved cases but was given only 56 cases in which the foreign government has not yet definitively refused to return the child, not the hundreds or thousands of cases in which the American children have never come home. Congress asked for a list of countries with a pattern of noncompliance but was given only a short list that inexplicably omits Germany, one of the worst offenders. Congress asked for detailed information on the unresolved cases but was given utterly useless narratives that not only omit individual names but country names on the preposterous grounds of privacy. Whose privacy? The abductor, the supporting government, and the State Department? Left-behind parents rarely if ever want privacy. They want the world to know what has been done to their child(ren) and who has done it.

## **Task Force Report to the Attorney General**

The Attorney General promised this report to the Senate Foreign Relations Committee last fall in order to gain the release of 38 law enforcement treaties being held up because of the poor performance of the Executive Branch in the child abduction area. The Report submitted to Congress has virtually nothing to do with the realities facing American parents and is a blatant attempt to perpetrate a fraud on Congress by giving the impression that the Executive Branch intends to do something other than maintain the status quo. The Report is an example of the oldest game in Washington: production of a “blue ribbon” report by bureaucrats under fire to get Congress, the media, and the public off their backs WHILE CHANGING NOTHING. This Report is noteworthy only for what it omits and conceals. NCMEC recognized this early in the drafting process and withdrew from the project in a hard-hitting written dissent available to the Committee, but the fails to make clear that NCMEC is NOT one of the drafters. Any credible GAO Report would have to evaluate this Report in detail and should discuss the facts that the Report does not explain the discrepancies between the Report’s rhetoric and actual Executive Branch conduct (opposition to legislation, thorough reporting, release of documents to parents) and the innumerable gaps, ambiguities, and cover-ups in the Report, including:

— no game plan for diplomatic and other responses to foreign government Hague violations or other forms of support for abduction/retention of American children

— no mention of the central importance of the absence of anything comparable to contempt of court in most Hague countries, thus ensuring total loss of children not returned under the

## Convention

- no indication that anything other than the status quo will be maintained with business as usual even with the worst violators of the Hague Convention and worst non-Hague countries
- no revelation of the largely successful effort to freeze NCMEC out of “outgoing” cases
- no clear recognition that these are not “private custody disputes”
- no disclosure of how bad the numbers are (see NCMEC memorandum to GAO)
- no recognition that a “grave risk” within the meaning of Article 13 of the Hague Convention exists from countries that cannot effectively enforce access or visitation
- no recognition of the consequences of failing to educate US courts about the nature of foreign government support of child abduction and retention
- no hint of DOJ refusal to enforce the 1993 International Parental Kidnapping Crime Act
- no hint of general DOJ refusal to request extradition
- no acknowledgment of the human rights standards that are being violated and the differing approaches of the First Lady (who is legally and morally right) and the State Department
- no mention of foreign government threats and demands against American parents concerning reimbursement of child support and legal fees paid to abductors
- no mention that the Executive Branch fails to monitor domestic litigation against American parents financed by foreign governments
- no strategy for dealing with extortionate demands by even the best Hague countries (e.g., the UK) for costly “undertakings” by the American parent, as in the Lebeau case
- no acknowledgment that foreign governments claim “private custody disputes” while hiding behind their sovereign immunity in hiring and paying American lawyers to represent abductors in abusive litigation in US courts intended to exhaust American parents financially
- no hint of State’s negotiation of child support enforcement agreements with foreign governments without safeguards or exclusions to protect left-behind American parents
- no revelation of State’s policy of closing cases and compartmentalizing them at the lowest level to avoid any impact on bilateral relations

## Legislative Proposals

The State Department failed to submit any legislative proposals, but used disingenuous and misleading arguments to oppose in an excessively destructive manner every Congressional initiative in the State Department Authorization Bill in both Houses (H.R. 2415- -previously H.R. 1211—and S.886). At the same time, it is not clear that the State Department informed House proponents that some proposals concerning issuance of passports would impact adversely and unjustly on many left-behind American parents of abducted children.

Mr. Chairman, so many problems presented to Congress require large allocations of human and material resources to fix, This one does not. So many issues involve legitimate foreign interests or competing US Government interests such as national security or major economic interests as possible bases for not assertively pursuing or defending the interests of American citizens. This one does not. So many international human rights and law enforcement problems cannot be addressed and largely remedied by means of the State and Justice Departments simply telling the truth and exhibiting sufficient political will. This one can.

As demonstrated beyond any doubt by their conduct during the past year, the State and Justice Departments are dedicated to maintaining the status quo and will not change unless forced to do so by Congress. Although the status quo guarantees that increasing numbers of American children will be successfully abducted and wrongfully retained abroad, the State and Justice Departments appear sensitive only to foreign complaints and interests. As American parents and those who try to help them know all too well, neither the State Department nor the Justice Department has shown any significant improvement in performance during the last year, despite the Senate Foreign Relations Committee hearings on October 1, 1999, excellent legislation proposed by members of this Committee and your colleagues in the Senate, widespread media coverage (in the New York Times, Reader's Digest, Insight Magazine, and many other publications), the personal involvement of the First Lady, and the efforts of those who have established the International Center for Missing and Exploited Children. Those who abduct and wrongfully retain American children abroad have little to fear from the United States Government. This has been spelled out by reporters Dan Levine and Tim Maier in recent Readers Digest and Insight Magazine coverage, respectively, with which The Committee may be familiar.

This past year also included the promotion of Assistant Secretary Mary Ryan to the highest possible rank in the US Foreign Service, perhaps in part as a reward for compartmentalizing international child abduction in her largely ineffective Office of Children's Issues, so that the rest of the Department and our embassies abroad do not have to deal with American parents and so that "good relations" with other countries are not disrupted no matter how outrageous the conduct of the foreign governments involved. How much confidence should American parents have in the State Department when its highest rank and the responsibility for protect-

ing American citizens overseas is given to someone who has actually said in my daughter's case "We cannot push too hard in the Johnson case because that might jeopardize the return of other children from Sweden." What was the basis for this statement by Mary Ryan? Direct or implied Swedish threats? Possible Swedish government orders to its "independent" Swedish judiciary? Fear of Swedish noncompliance with treaty obligations in other cases via linkage? Belief in the effectiveness of appeasement?

Perhaps this Committee has heard a more classic expression of appeasement from a senior Executive Branch official. One hopes not. In other words, if we keep quiet and write off one American child, maybe countries such as Sweden will behave better in future cases. Of course, the opposite is true. Appeasement is no more effective in 1999 than it was sixty years ago. It remains an utterly contemptible and morally bankrupt policy, especially when the world's only superpower practices it in abandoning its children for nothing more than a mindless desire to be liked and to have good bilateral relations for their own sake.

Why should countries like Sweden, Germany, and Austria treat the United States with anything other than utter contempt in child abduction matters, as they do? They are doing a superb job of taking care of their citizens and shielding them from the consequences of their criminal conduct. If the United States does not care about its children, why should they? Why should they change their behavior in any way, when it is so beneficial to their citizens and when the United States has provided no incentive to do so, has generally proven inept by using inexperienced personnel to try to match wits with far more senior foreign officials, and fails to follow through in any practical way when it does do something, such as transmitting a diplomatic note of protest. On the one hand, the United States returns close to 100 percent of the children these countries request, even those who should remain here because their American parents cannot obtain from Swedish/German/Austrian courts due process of law and fair treatment in general or enforceable access and visitation in particular, while on the other hand such countries return only a small fraction of the children requested by the United States.

## **GAO Report**

As indicated above, a credible GAO report must thoroughly evaluate the Task Force to the Attorney General along the lines suggested and address those issue wholly apart from the context of the Report to the Attorney General. GAO has been supplied with the names and addresses of dozens of American parents, attorneys, and others familiar with the performance of the Executive Branch concerning international child abduction and retention. GAO needs to interview these people and form its own conclusions. Among other things, a GAO report should include:

- Scope of the problem with complete statistics
- Adequacy of existing legislation

- Adequacy of cooperation with NCMEC and American parents
- Refusal of State to include the subject in the Human Rights reports
- Adequacy of the Hague Convention Report to Congress
- Adequacy of Executive Branch cooperation
- -Disparity between return rates from the US versus to the US
- Review of case files to ascertain adequacy of State services to parents
- State's criteria for closing cases
- Executive Branch strategy for dealing with violator countries
- Treatment of American parents (access to documents, protection from foreign child support demands, frequency of contact)
- Cooperation and support from embassies and the State Department overall

## **HUMAN RIGHTS**

As mentioned frequently in this statement, foreign government support of child abduction and retention is a human rights matter. The First Lady has made this point repeatedly, including at the inauguration of the International Center for Missing and Exploited Children on April 23, 1999 at the British Embassy. She is right legally and morally. Articles 9, 10, 11, and 18 of the Convention on the Rights of the Child, which the United States has signed, are directly on point. The UN Committee on the Rights of the Child considers abduction/retention a human rights matter accordingly and has recommended to Austria and Sweden that they improve their legislation concerning respect for foreign custody orders. In like manner, the European Commission/Court of Human Rights has considered cases involving the subject. The leading expert on the Hague Convention, Adair Dyer of Texas (the now-retired Hague Academy official in charge of the Convention), has declared "Of course the Hague Convention is a human rights treaty!" While the initial act of abduction or retention may not be a human rights violation per se, just as street crime in a foreign capital against Americans is not, it IS a human rights violation when foreign governments fail to provide American parents with any effective remedies and, worse, directly facilitate, finance, otherwise support, and reward this conduct by their citizens through a governmental system of the type described below in the case of Sweden. Taking into account the more than 2000 pages in the annual Human Rights reports devoted almost exclusively to what foreign governments do to their citizens in many areas less serious than child abduction, it is not asking too much for the State Department to address what foreign governments systematically do to American citizens in violating their human rights set forth in numerous human rights instruments.

Mr. Chairman, Congress estimated the number of internationally abducted or wrongfully retained American children at 10,000 when it passed the International Parental Crime Act of 1993. With the increasing failures of the Hague Convention on the Civil Aspects of International Child Abduction (less than a thirty percent return rate for American children), the virtual refusal of the US Justice Department to utilize the 1993 Act when Hague remedies are inapplicable or have been exhausted, the worst offending countries rightly emboldened by

the present certainty that they generally risk no real-world consequences or even adverse publicity, and the absence of adequate preventive measures, the situation is only getting worse for left-behind parents who play by the rules in both countries concerned. They need to know that foreign government compliance with the international legal obligations they have undertaken in ratifying the Hague Convention and applicable human rights treaties cannot be relied upon.

The principal purpose of this statement, as indicated above, is not only to discuss individual cases or countries, but rather to provide a general description of foreign government support for the abduction and retention of American children, the response of the United States Government, and proposed Congressional actions to assist American children and parents affected by the crime of international parental child abduction and retention. Accordingly, the following information on my daughter Amanda's case and my experience with the Swedish legal and social welfare systems is provided primarily as a case study or as an example of what often confronts left-behind American parents.

## **1. Five Pillars of Governmental Child Abduction or Wrongful Retention**

While the present overall Swedish legal and social welfare system may well be one of the worst adversaries that a left-behind American parent can face, at least some elements of that system exist in many other countries, especially in European civil law countries. The Swedish system includes all of what could be called the Five Pillars of governmental child abduction and retention: no principle of comity in the legal system, extreme gender or national bias in the courts, payment of unlimited legal fees for the child abductor at home and abroad, no enforceability of civil court orders (including child return orders and visitation orders), and criminal legislation that protects parents who abduct or wrongfully retain children. In a given case, only one of these five "pillars" may be enough to ensure a successful abduction or retention:

Regrettably, Amanda is only one of thousands of American children abducted or wrongfully retained abroad. As Congress recognized in passing the International Parental Kidnapping Crime Act of 1993 ("the 1993 Act"), Amanda's case and Sweden's indefensible conduct are not unique, although the facts and circumstances of Mandy's case are particularly aggravated. Despite the best efforts and intentions of Congress and some individuals in the Executive Branch in recent years to combat the continuing tragedy of international parental child abduction, the fact remains that American parents whose children are abducted or wrongfully retained abroad are all too often up against the full weight of foreign governments (including Parties to the Hague Convention such as Sweden) prepared to supply virtually unlimited financial and other resources (e.g., government child psychiatrists and psychologists) to assist their citizens who abduct or wrongfully retain children. What has happened to Amanda and me can happen to any American citizen, already has happened to many, and will unquestionably happen to more in the future, unless Congress acts to prevent "business as usual" with

the governments involved and to provide other remedies. Without the help of Congress along the lines suggested below, more American citizens will continue to be victimized by foreign parents and their governments determined to abduct or retain American children, withhold them abroad, and ignore US and international law. This statement is submitted in the hope that Congress will act quickly and decisively to help other Americans avoid the nightmare to which my family has been subjected.

## **2. No Enforceable Visitation or Other Parental Rights**

As a preliminary consideration concerning any child abduction or retention involving Sweden (and most other European civil law countries), it must be noted that children not returned under the Hague Convention are likely to be completely lost to their American parents and families. The parental rights of an American parent may be effectively terminated by the inevitable grant of sole custody to the local national (or of joint custody in name only with the local national enjoying all the aspects of sole custody) when a court in a European civil law country exercises regular child custody jurisdiction. In Sweden, for example, a non-Swedish, non-custodial parent has no enforceable parental rights, and unenforceability continues to be the key element of the Swedish system now that joint custody on paper has become the norm for cosmetic purposes. The Swedish legal system and individual judges cannot control the conduct of Swedish parents (or otherwise protect the rights of foreign parents) because there is nothing comparable to contempt of court or any other effective means of enforcing visitation or access under a Swedish custody order. For Amanda, who lived with me half the time for several years and traveled freely with me both in the US and Europe, even supervised visitation in Sweden is totally unenforceable and at the whim and mercy of the child abductor.

A new Swedish law that entered into effect one year ago permits Swedish judges for the first time to impose joint custody over the objections of one parent. That occurred in my case during a Swedish court hearing in February 1999 and inspired some in the State Department and the American Embassy in Stockholm to proclaim that the problem was now solved. This again reflects the limited knowledge and expertise of the State Department personnel who work on these cases. The February 1999 ruling was reversed by the same judge in June 1999 (with sole custody for the Swedish mother restored) and then reversed again by an appeals court in September 1999 to give me joint custody. None of this has any practical effect in terms of unsupervised visitation with Amanda in the United States (or Sweden for that matter). Just as other seemingly progressive elements of Swedish child custody law and policy only apply when -both parents are Swedish (e.g., shifting sole custody away from a parent that withholds a child, unless, of course, the consequence is that the child leaves Sweden), this new law has not been applied with any practical effect in cases involving non-Swedish parents. The terms of any Swedish joint custody order is just as unenforceable as any visitation awarded under Swedish sole custody orders. Nothing has changed in that regard, although intense and sustained international pressure on Swe-

den might bring about reforms that include mechanisms comparable to contempt of court.

For the reasons just given, I have spent more than \$200,000 of my savings to avoid Swedish custody jurisdiction because of the guaranteed consequences: a court order that even some US authorities may view as giving the “color of law” to termination of the child’s American life and my parental rights. Amanda is not the first American child to be subjected to these violations of her human rights by Sweden, she is not the only one at the moment (e.g., the child of Mark Larson of Orem, Utah; the child of Ian McAnich of Dallas, Texas; the children of Greg O’Donohue of Burbank, California; and the children of Greg Benson of San Diego, California), and she will definitely not be the last without sweeping reforms of Swedish legislation, policy, and attitudes. As discussed below, Congress can do a great deal to reduce the risks for American children and -their parents, while increasing the risks of wrongful conduct for governments like Sweden and their citizens.

### **3. These Are Not “Private Child-Custody Disputes”**

One of the worst aspects of these cases for American parents, as indicated above, is to endure the disinformation campaign conducted by foreign governments and echoed by State Department officers and lawyers up to the Assistant Secretary level that these are “private custody disputes.” Until the Washington Post article mentioned above concerning Lady Meyer appeared in June 1998, it is likely that few Washington decision makers and opinion leaders would have thought possible what Germany has done to the relationship between Catherine Meyer and her children. And that is the key point. It IS Germany (its governmental, legal, and social welfare systems) that has committed these human rights violations, just as it is Sweden that has done everything possible to destroy Amanda’s relationship with her American family, friends, home, and familiar environment in Virginia.

In short, these are NOT “private child custody disputes,” as Germany and Sweden try to claim in these cases, and as Executive Branch officials who may wish to write off the children concerned and do business as usual with such countries would like to believe. The following are not “private”: treaty violations, Federal and state felonies, human rights abuses, government payment of legal fees and other financial support, foreign government failure to provide civil or criminal remedies to left- behind American parents, foreign government refusal to respect US laws and court orders.

American parents in such cases are often essentially alone against the power and wealth of the governments concerned. Of course, individual parents capable of internationally abducting or wrongfully retaining children are to be found in every country. The question, therefore, is whether their governments will control their conduct and protect the parental rights of foreign parents, especially in light of the international legal obligations of all countries under either (or both) the Hague Convention and human rights treaties that guarantee the role of both parents and the right of children with parents of different nationalities to spend time in

both countries.

The disinformation inherent in the false claim of “private child custody dispute” is particularly infuriating to American parents who have spent much of their savings fighting against the deep pocket of a foreign government in both U.S. and foreign courts simply to maintain contact with their children while obeying all applicable laws in both countries. As indicated above but worth repeating, this “private child custody dispute” red herring (an appropriate description taking into account the conduct of some Scandinavian and Northern European countries) also attempts to cover up what can only be described as sophisticated and very well-financed governmental child abduction systems, for example, in many European and other countries that may include some or all of the following:

- 1) undeniable bias against foreign parents by the courts (compared to the very high rate of returns of abducted children from the US ordered and enforced by US courts),
- 2) no enforceable visitation or other parental rights for foreign parents (owing to the absence of anything comparable to our contempt of court mechanism)
- 3) no concept of comity (reciprocal enforcement of foreign court orders, including custody orders agreed to by their nationals)
- 4) payment of unlimited legal fees for their nationals who abduct or retain children in all litigation at home and in the US (in both Hague Convention and regular custody proceedings)
- 5) aggressive action by police and prosecutors against foreign parents in enforcing criminal legislation specifically drafted and intended to protect their child abductors/retainers;
- 6) “address protection” programs that enable abductors/retainers and the children involved to disappear even from US consular officers, with the aid of the police and social welfare agencies

Because it has proven nearly impossible for Executive Branch officials and other Americans (especially judges and lawyers) to believe, it must be repeated that, as a practical matter, the exercise of jurisdiction over an abducted or wrongfully retained American child in a regular child custody proceeding by a German or Swedish or Austrian or Danish court (with the inevitable grant of effective sole custody to the non-American abducting parent whether or not it is called “joint” custody) is equivalent to termination of the parental relationship between the child and the American parent. Even if some form of access or visitation is awarded on paper, American parents have no legally enforceable rights of any kind in such countries.

## **COUNTRY SUMMARIES**

The following is an example of the kind of country-by-country information in narrative form that should have been prepared long ago by the State Department and that should be readily available to Congress, US courts, attorneys, and parents in the annual human rights reports, on the Internet and elsewhere as advisories, in an annual Hague Convention Compliance Report, and otherwise:

## **SUMMARY OF THE SWEDISH GOVERNMENT SYSTEM OF INTERNATIONAL ABDUCTION AND WRONGFUL RETENTION OF CHILDREN**

In both domestic and international situations, cases of abduction and wrongful retention of children by a Swedish parent are not merely “private custody disputes,” in view of the lack of effective remedies provided by the Swedish legal and social welfare systems to the left-behind parent and the extensive Swedish government financial, law enforcement, social welfare, and other support supplied to Swedish parents who engage in abduction/retention of children.

In international cases where only one parent is Swedish (particularly where the mother is Swedish), children not returned under the Hague Convention on the Civil Aspects of International Child Abduction are, as a practical matter, completely lost to their non-Swedish parents unless the Swedish mother decides otherwise. This is the result of the Swedish legal system’s inability to effectively control the conduct of Swedish parents and protect the rights of non-Swedish parents in the absence of any judicial power comparable to contempt of court. In regular child custody proceedings, Swedish courts invariably grant sole custody to Swedish mothers and, as noted, have no power to enforce visitation for non-custodial parents. Although a new Swedish law entered into force on October 1, 1998 permitting Swedish judges for the first time to impose joint custody over the objections of one parent, this law will not be applied with any practical effect when a foreign father is involved. Moreover, the terms of any such joint custody order will be just as unenforceable in Sweden as the visitation provisions of a sole custody order. Similarly, although Swedish legal principles permit sole custody to be shifted from a parent who denies access to a child on the grounds that such a parent is unfit per se, it is highly unlikely in such a case that custody would ever be shifted from a Swedish mother to a non-Swedish father when the consequence would be that the child leaves Sweden to reside elsewhere.

Even in cases where a foreign parent has sole or joint custody under a non-Swedish custody order and no Swedish custody order exists, there is no concept of comity in the Swedish legal system (despite Sweden’s obligation under Article 1 of the Hague Convention to ensure respect for the rights of custody and access under the law of other States Parties). Swedish law enforcement authorities, having been informed by the Ministry of Foreign Affairs that foreign custody orders “have no validity in Sweden,” aggressively interfere with any effort by a foreign parent to exercise his custody rights in Sweden and may arrest and prosecute

him under a unique Swedish penal law that effectively protects and rewards Swedish child abductors/retainers.

In both Hague Convention and regular child custody litigation in Sweden and abroad (including impossible appeals in Sweden, the other country concerned, and the European system), the Swedish social welfare system provides unlimited payment of legal fees for Swedish citizens, thus significantly reducing the incentive for the Swedish child abductor/retainer to compromise or otherwise settle the case. This enables the Swedish citizen to pursue appeals to the highest courts of Sweden and the other country concerned at no expense, while exhausting the financial resources of most non-Swedish parents. In any event, Swedish authorities will not enforce or otherwise respect foreign appellate judgments against Swedish parents.

In non-Hague cases, as demonstrated by the now leading decision of Sweden's supreme court in the Ascough case during 1997 (children of Australian/British father and Swedish mother residing in Singapore), the Swedish courts will take jurisdiction and award sole custody to a Swedish mother even in cases where the children were born outside of Sweden, clearly reside outside Sweden, have never resided in or even visited Sweden, and were unquestionably abducted to Sweden.

In summary, Sweden's overall legal and social welfare system concerning child custody and parental child abduction/retention does not comply with numerous provisions of human rights treaties to which Sweden is a Party, notably the Convention on the Rights of the Child, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights as a result of six factors:

- 1) the undeniable gender and national bias of Swedish courts, especially in favor of Swedish mothers
- 2) the absence of anything comparable to contempt of court to enforce visitation or other parental rights for fathers (i.e., non-custodial parents)
- 3) the unlimited financial support received in Sweden and abroad by Swedish child abductors
- 4) enforcement by Swedish law enforcement authorities of a criminal law intended to protect and reward Swedish child abductors
- 5) the lack of comity with respect to non-Swedish court orders, and
- 6) the refusal of Sweden to extradite or effectively prosecute Swedish child abductors.

Most notably, Sweden's legal and social welfare systems are inconsistent with both the letter

and spirit of Sweden's obligations under the Convention on the Rights of the Child to ensure contact with both parents and, in international cases, with both countries. Thus, Sweden cannot ensure compliance with the provisions of the Convention most relevant to child custody and child abduction/retention: Articles 9, 10, 11, and 18. The United States has signed but not ratified the Convention, but complies with these articles in practice to a far greater extent than Sweden.

## **AMANDA'S CASE**

Voluminous documentation concerning Amanda's wrongful retention in Sweden by a Swedish diplomat and the Government of Sweden, as well as information on other American children abducted to Sweden, has already been supplied to Committee staff. An updated chronology of the case is attached to this statement, along with:

- the unanimous decision of the Virginia Court of Appeals upholding the Virginia Custody Order
- the Virginia Supreme Court Order dismissing further appeals
- Swedish Government demands for reimbursement of legal fees and child support paid to the abductor
- a Swedish criminal law intended and used to protect Swedish child abductors and punish non-Swedish parents who attempt to exercise their custody rights
- photographs showing Swedish police participation in the continuing Federal and state felonies against Amanda and me, and
- an outline of the Swedish Government's System of supporting and financing parental child abduction.

With full support in every conceivable way from the Government of Sweden, Amanda has literally been held hostage in Sweden since early 1995, in violation of:

- US civil law and court orders to which the mother agreed in open court
- US Federal and state criminal law
- Sweden's international legal obligations under several treaties (The Hague Convention on the Civil Aspects of International Child Abduction, the Convention on the Rights of the Child, the European Convention on Human Rights, and other human rights instruments)
- Sweden's own civil and criminal laws on joint custody and child abduction (which are never enforced against Swedish mothers), and
- the eligibility requirements for payment of all legal fees in Sweden and abroad by the Swedish Government (which are apparently conveniently waived for Swedish abductors).

The facts of the case are clear, Amanda, a US citizen and resident from birth (November 11, 1987), is also a Swedish citizen, She was a US Government dependent during her first two years while I was posted at the US Mission in Geneva. Mandy then lived with me in Virginia

roughly fifty percent of the time until age 6, attending three years of preschool and kindergarten at Browne Academy in Alexandria, Virginia. She spent the rest of her time in New York with her mother, Anne Franzen, who was the lawyer at the Swedish Consulate with lead responsibility for child abduction and custody matters, and who was actually offered the position of Head of the Swedish Central Authority for the Hague Convention upon leaving New York. Despite being wrongfully withheld outside the US for nearly five years now, Amanda has still lived longer in an American diplomatic community or the US itself than in Sweden. She should have been living again in the US since the spring of 1995 under the agreed terms of a December 1993 Virginia custody order and subsequent enforcement orders, which make clear that Amanda's habitual residence continues to be Virginia, that the Virginia courts have continuing exclusive jurisdiction over her case, and that the parents are prohibited from seeking custody modification in any court anywhere in the world without the consent of the Virginia court.

The case against Anne Franzen (Deputy Assistant Under Secretary for Human Rights in the Swedish Foreign Ministry at the "Lime) was so strong that four Swedish courts either ordered Amanda's return under the Hague Convention or held that Sweden did not have jurisdiction over Amanda because she was only in Sweden temporarily in accordance with the Virginia Custody Order to which the mother had agreed. After endless delays, stays of execution, appeals, and litigation financed for the mother by the Swedish Government in 8 separate proceedings in 6 courts (a Hague process that lasted 17 months instead of the 6 weeks set forth in the Convention), the final court from which there was no appeal (the Swedish Supreme Administrative Court or Regeringsrätten) reversed all 'the lower court rulings in a May 1996 decision that has been declared by the US Government in diplomatic notes to be a violation of the Convention and that has been rejected by the highest courts of Virginia.

On August 9, 1996, with the abducting mother represented by counsel paid by the Swedish Government, the Virginia Court granted me sole and exclusive custody, made contempt findings, and issued several other forms of relief. There was never a Swedish custody order of any kind concerning Amanda until an interim joint custody order was issued by a Swedish court in February 1999. The Virginia Custody Order has withstood costly challenges in the highest courts of Virginia financed by the Swedish Government, and remains the only final order in the world. But Amanda continues to be wrongfully withheld from me, the rest of her American family, her home and familiar environment, and her country by her mother and by the Government of Sweden through a legal and social welfare system that fails to meet even minimal standards of due process of law (e.g., no rules of evidence and no prohibitions on ex-parte communications with judges).

Between December 1995 and June 1999, Amanda was able to see me on only five occasions, for a total of 15 hours. On the second occasion (September 16, 1996), after picking Amanda up at her school as a custodial parent unwilling to subject the two of us to the continued

degradation of supervised visitation that had unlawfully been imposed for nearly two years at the time, I was wrongfully detained in her presence four hours later at our hotel (where I had informed the mother we would be) by four Swedish policemen at the abducting mother's request. I was held in solitary confinement for nearly 48 hours, despite (or actually because of) the fact that I have sole custody under the only final Custody Order in the case and have joint custody even under Swedish law. Although I was released, never charged with any offense, and compensated by the Swedish Government for wrongful detention, the incident has done incalculable harm to Amanda and to my relationship with her.

On the third and fourth occasions, in December 1996, I was only allowed to see Amanda's habitual residence continues to be Virginia, that the Virginia courts have continuing exclusive jurisdiction over her case, and that the parents are prohibited from seeking custody modification in any court anywhere in the world without the consent of the Virginia court.

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On the third and fourth occasions, in December 1996, I was only allowed to see Mandy under police guard at her school, with the police challenging the presence of the Vice Consul from the American Embassy on one occasion and making a further mockery of my joint custody "rights" in Sweden (see attached photographs of Swedish police car at Amanda's school). Amanda and I did not see each other after that demeaning experience in December 1996 until February 1999 when the abducting mother supervised some brief visitation.

Every element of joint custody has been violated: no school or medical records, no photographs, no information on activities or general welfare have been provided to me. There has been no response to any of the countless letters and packages sent to Amanda. For the summers of 1997 and 1998, creative efforts by my Swedish and American attorneys to arrange visitation in the United States with guaranteed returns to Sweden (US court orders ARE enforceable) or any type of supervised or unsupervised access in Sweden were summarily rejected by the mother and her attorney. No assistance was provided by the judge now assigned to the case. The judge who previously dismissed the mother's petition for sole custody and upheld the Virginia Order has, not surprisingly, been removed from the case.

In February, an interim joint custody order was issued over the mother's objection because joint custody is now the norm in Sweden, although it has no practical enforceable meaning in Sweden. The terms of the order gave the mother de facto sole custody, with only supervised visitation in Sweden. Even this meaningless "joint custody" was reversed by the same judge in June 1999 at the mother's request. Several hours per day of supervised visitation took place for a few days in June 1999. The good relationship between Amanda and me has survived despite all efforts by the abductor and the Swedish Government to destroy it, but serious damage has been done to the child (a nervous tick in both eyes). Amanda lived alone with me in Virginia and attended three years of school roughly half the time for nearly 4 years, but everything possible has been done to de-Americanize her and eliminate her relationship with me.

In September 1999, an appeals court reversed part of the June 1999 interim order, restoring joint custody and saying that visitation (still limited to Sweden) does not need to be supervised. Like everything else in the Swedish system, this is not enforceable, and an effort for contact between Amanda and me during the October 8-10 weekend therefore collapsed over the issue of supervision.

## **UNITED STATES GOVERNMENT RESPONSE (OR LACK THEREOF) TO FOREIGN GOVERNMENT SUPPORT OF INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN ABROAD**

Today, when an American parent faces the nightmare of international child abduction or wrongful retention abroad, he or she does so alone in most respects. Legal fees and other expenses can quickly mount to tens of thousands of dollars. A decade after US ratification of the Hague Convention on the Civil Aspects of International Child Abduction, there is still no central repository of reliable information and expertise in the Executive Branch that can quickly and effectively supply accurate basic data on the legal system, child custody institutions, law enforcement system, social welfare system, legal aid program, and Hague Convention performance of the abductor's country. The left-behind American parent thus has little basis for evaluating the options available.

Some of the information supplied by the Executive Branch last year to the Senate Foreign Relations Committee in order to obtain the release of 38 law enforcement treaties was inaccurate, incomplete, and misleading, particularly the implication that "everybody does it" and that the United States is no better than most other countries. That implication is false, and the Executive Branch knows it. Moreover, the frequent claim by the Executive Branch that elementary but essential information on a variety of matters concerning foreign legal systems in connection with child abduction or child custody is "not available" to the Executive Branch is untrue. This information is readily available and could be obtained without difficulty or expense from American embassies, experts in the field, local attorneys, and American parents who have learned the hard way. The Executive Branch simply does not want Congress to have this information because of the likely Congressional reaction.

Although all concerned would presumably agree that prevention and deterrence of child abduction or wrongful retention are the ultimate goals, little is being done in this area. Dissemination of information on the key institutions, laws, and child custody practices of other countries is the key to eliminating much of the secrecy and ignorance that leads to successful child abductions and retentions. Countries whose legal systems and child custody institutions guarantee frequent non-compliance with the Hague Convention or no visitation or other rights for American parents need to be publicly identified and analyzed in depth.

As suggested below, effective vehicles such as the annual human rights reports already exist, and Congress passed legislation last year requiring an annual country-by-country Hague Convention compliance report. As already noted, the State Department submitted a poor report that was inconsistent with both the letter and spirit of P. L. 105-277, but that makes the case for renewed legislation and a permanent reporting requirement. That requirement

should be broadened to include cases not resolved within six months, cases involving non-Hague countries, and lists of countries that have any of the 5 Pillars of a governmental child abduction system mentioned above. Maximum use should be made of the Internet and other established channels in the family law and consular affairs fields to ensure that US courts, attorneys, and parents with children at risk are aware of the likely consequences of an abduction to or wrongful retention in a given country.

Left-behind parents often find themselves more knowledgeable in many ways than those in the Executive Branch who are supposed to help them, especially in view of the fact that case officers now are responsible for around 150 cases, according to a recent statement by the Assistant Secretary of State for Consular Affairs. If those who are supposed to help (or their superiors) are primarily interested in maintaining “good relations” with the other countries concerned or declare that they do not- work for the American people but rather for the Secretary of State or are fearful that pressing too hard in a current case will jeopardize assistance from a particular country in future cases, the plight of the children involved and their left-behind parents worsens. In the latter case, such a classic policy of appeasement is no more successful in dealing with child abduction than it has historically been in any other field.

At present, there is no real advocate for left-behind American parents, who must deal with a hostile foreign government and an often unresponsive US Government, whereas foreign parents whose children are abducted or retained in the United States have access to the superb capabilities and staff of the National Center for Missing and Exploited Children (NCMEC) because of its role in dealing with “incoming” cases (i.e., abductions to or retentions in the United States). Left-behind American parents would greatly benefit if NCMEC were allowed to play this role for “outgoing” cases instead of “incoming” cases, as suggested above.

There is no monitoring by the Executive Branch of US litigation financed by foreign governments against left-behind American parents (or responsiveness to reports of such litigation), so that US Government statements of interest or amicus curiae briefs can be filed in landmark cases. Instead, the Executive Branch participates in Hague Convention and perhaps other litigation on behalf of foreign parents while failing to help Americans up against the deep pocket of foreign governments trying to reverse or undermine US court orders. Assisting Americans would not require a significant increase in resources. In two recent cases, statements of interest from the US Government of only a page or two would have been invaluable. In my own case, I prevailed in upholding the US custody order in the highest courts of Virginia, but only at a personal cost of more than \$20,000 while the Swedish Government financed this bad faith litigation to exhaust my financial resources while having no intention of respecting any result adverse to the Swedish abductor. In the other case, Mark Larson of Utah lost in the 10th Circuit for acting precisely in accordance with US Government policy and advice in Hague Convention cases. In view of the strong dissenting opinion, literally a few sentences in a US Government statement of interest might have made a difference.

In contrast, foreign Central Authorities often work just as hard to assist their nationals who abduct or wrongfully retain children as they do for their nationals who are victims of these offenses. In the case of the Swedish Central Authority, its support of child abduction and wrongful retention include such means as coordination of litigation strategy in both Sweden and the US against American parents. This has included creative attempts to:

a) use the Uniform Child Custody Jurisdiction Act in US courts to obtain for Sweden the status of an American state for purposes of jurisdiction and enforcement of Swedish custody orders, and,

b) use the mere existence of the 1993 International Parental Kidnapping Crime Act in both Swedish and US courts as a justification for not returning children to the US on the pretext that the Swedish abductor might be prosecuted (which adds insult to injury in view of the fact that the Justice Department will only rarely enforce the Act)

Other activities of the Swedish Central Authority have included automatic distribution of Swedish and US Government documents and information to Swedish abductors and their attorneys (while the State Department tells Americans to file Freedom of Information Act requests), informing the Swedish police and prosecutors that American child custody orders have no validity in Sweden in contravention of the whole object and purpose of the Hague Convention set out in Article 1, translation only of court decisions and other documents favorable to the Swedish abductor, and so on. Such conduct by a foreign government, especially its Central Authority for an international convention against child abduction and wrongful retention, should receive the widest possible exposure and censure.

Litigation in the United States financed by foreign governments against Americans who are already the victims of crimes committed by nationals of those governments should at least raise some serious questions about possible abuse of sovereign immunity. For example, the Swedish Government attempts to put a legal gloss on the abductions and wrongful retentions committed by its citizens by pursuing frivolous appeals of US custody orders all the way to the supreme court of the states concerned even when the children have been held hostage in Sweden for years. Roughly five years ago, Julia Larson was abducted to Sweden from Utah for the third time and my daughter Amanda was wrongfully retained in Sweden. Neither child has been in the United States nor been allowed normal contact with their American families, but the Swedish Government has considered it necessary to try to make everything look “legal” by attacking the Utah and Virginia custody orders in extremely expensive and time-consuming litigation. An effort in Virginia to satisfy a money judgment against the abducting mother by garnishing the retainer paid to her attorney was blocked by an affidavit (attached) declaring that all funds held by the law firm are directly from “the Kingdom of Sweden’s legal aid agency.”

In many respects, an improved United States response requires a change in attitude, so that senior officials acknowledge that foreign legal and social welfare institutions which permit the successful commission of crimes against American children and their parents are not “private child custody disputes” or merely the errors of an “independent judiciary.” Regarding the latter point, it is not clear that the State Department is aware that the judges are not particularly independent in many European countries. They become judges relatively early in their careers, do not have life tenure, and depend on the Ministry of Justice for future assignments. In any event, evidence of foreign government involvement in and support for parental child abduction or retention by their nationals must no longer be ignored by the Executive Branch.

### **International Parental Kidnapping Crime Act of 1993**

This Act should either be revised (if that will result in greater willingness of US Attorney’s offices to utilize it) or be enforced as it stands when Hague Convention remedies are exhausted or inapplicable, or the left-behind parent so requests. At present, despite the best intentions of Congress, the 1993 Act is not only a failure in helping Americans (there have been few indictments, and fewer still convictions and provisional arrest requests under the Act), but it has become an effective tool for foreign child abductors and retainers. Under some extradition treaties, it actually creates dual criminality where none existed before, so that American parents who rescue their abducted children can be extradited to countries that refuse to extradite their nationals for parental child abduction or any other offense and also refuse to return children consistently (or at all) under the Hague Convention.

Moreover, to add insult to injury for the victims of child abduction or wrongful retention who know that the Department of Justice will generally not implement the 1993 Act, its mere existence (and the purely theoretical possibility of prosecution of foreign abductors or retainers) is being used against American parents in Hague Convention and regular custody litigation in the US and abroad. Attorneys for child abductors/retainers, including those hired and instructed by foreign governments that are US treaty “partners,” have argued that the fear of prosecution under the 1993 Act justifies the denial of applications for return of children under the Hague Convention, as well as refusal of abductors/retainers to appear in US custody proceedings. This latter argument concludes with a demand that US courts defer to the jurisdiction of the foreign court.

That was precisely the argument made in Virginia to the trial court and the Court of Appeals in my daughter’s case by the attorney hired by the Swedish Government. Fortunately, the Virginia judge cut through the argument by asking whether the abductor would immediately return to Virginia with the child if given immunity from prosecution. This bad faith argument fared no better in the Court of Appeals. But the argument that the children should not be sent back to the US under the Hague Convention if the local parent faces criminal charges will almost certainly succeed in many foreign courts.

With regard to implementation of the 1993 Act, the approach being taken by some U.S. Attorney's offices concerning the Act cannot possibly be consistent with the intent of Congress. Although the Act places both wrongful removal (or abduction) of a child from the United States and wrongful retention abroad on the same level, as does the Hague Convention, wrongful retention abroad is effectively being read out of the Act by some prosecutors as not serious enough to merit indictment.

Moreover, some prosecutors have unilaterally added as an affirmative defense that a child abductor or retainer is attempting to obtain a local custody order abroad and would already have succeeded so but for Hague Convention proceedings freezing the local custody process. In like manner, some prosecutors are incorrectly asserting that a foreign court order denying return of the child(ren) under the Hague Convention constitutes a defense under the Act. Disregarding the entire object and purpose of the Hague Convention in Article 1 (respect for the custody laws of other Parties to the Convention), such prosecutors apparently have no difficulty with individuals who clearly violate US court orders and custody rights, as long as they are also attempting to persuade a foreign court to ignore the orders and unilaterally take jurisdiction over the case. In essence, this approach gives immunity from prosecution, so long as abductors are using the legal process in their home country, no matter how corrupt, incompetent, or biased against foreign parents it may be.

Even when Hague Convention remedies are inapplicable or have been exhausted, and thus utilization of law enforcement mechanisms will not jeopardize return of the child(ren), left-behind parents hear a litany of excuses for failure to implement the Act or to use it in any way to pressure abductors into returning the child(ren). The latter approach does not constitute misuse of the criminal process to achieve a civil law objective, as some might argue. Rather, it would constitute use of a criminal law to bring a halt to criminal conduct, which is presumably what Congress intended. At the moment, the point is moot because the 1993 Act is being used far more by foreign governments against Americans than by the US Department of Justice.

In litigation financed by foreign governments, as noted above, its mere existence is cited as a reason not to return children to the United States in European courts and as a reason to defer to European jurisdiction in US courts. Adding to the irony of the general refusal by US law enforcement authorities to implement the 1993 Act is the very aggressive enforcement by some European law enforcement authorities of laws or policies that protect local child abductors and target foreign parents who attempt to exercise their sole or joint custody rights. An example of such a criminal law from the Swedish penal code is attached to this statement. It has been used as a justification for aggressive Swedish police action against several American fathers, including me, as described above.

Ironically, the record of US courts under the Hague Convention in recent years is nearly per-

fect concerning returns of children to some of the worst violators of the Convention, including Sweden. There have in fact been essentially voluntary returns of children to the United States from such countries. But a determined Swedish or Danish or Austrian or German child abductor/retainer (among others) will almost never have to comply with return orders from their own courts. There is nothing comparable to contempt of court with jail time attached, so there are no truly effective means of enforcing civil court orders in European civil law countries, including Hague Convention return orders. Police assistance to enable an American or other non- local parent to take a child out of the country is virtually impossible. Moreover, European abductors/retainers have the possibility of further delaying and frustrating the Hague Convention process by utilizing the European Human Rights Commission and Court in Strasbourg.

Especially in Scandinavia, mothers also increasingly have the option of going underground” or otherwise stalling long enough to have the case reopened, with the best interests of the child(ren) then being found to require remaining in place because they are fully resettled. Of course, in social welfare States where the governments continue to pay legal fees, child maintenance, and other allowances to child abductors, the authorities can easily find those who go “underground” if they want to.

While a few countries that provide legal aid to both parties in Hague cases without regard to need (e.g., the United Kingdom) may have a valid complaint about the failure of the United States to provide legal aid to anyone, the situation is far worse where a government pays unlimited legal fees at home and abroad for its child abductors, so that left-behind American parents are confronted by the deep pocket of a foreign government not only in foreign courts but also in US courts. The point is that foreign parents are not in any way up against the US Government in abduction cases here.

Several additional preventive and remedial actions by Congress are needed to “level the playing field” for American parents facing off against foreign governments. Congress is confronted daily with many competing demands that have serious resource implications. This request does not. It seeks only the requisite political will to accomplish the objectives of better protecting American children from international parental kidnapping, especially when such conduct is directly supported by foreign governments.

Taking into account that the high rate of return from a very few countries (e.g., the United Kingdom) makes even the overall return average of thirty percent misleading, the Hague Convention success rate with certain countries is so low that the reality facing many American parents is a stark choice between abandoning their children or conducting a rescue operation. That reality and the country-by-country details behind it need to be comprehensively disseminated to all U. S. courts, family law practitioners, law enforcement authorities, and the general public.

## **PROPOSED CONGRESSIONAL ACTIONS AGAINST INTERNATIONAL CHILD ABDUCTION**

Congress may wish to give serious consideration to specific proposed actions listed below in order to accomplish three general objectives:

- 1) Dissemination of sufficient information to alert US courts, law enforcement authorities, family law practitioners, and parents in bi-national situations concerning the difficulties of gaining the return of American children from particular countries;
- 2) The sending of a clear worldwide message that the US Government will no longer tolerate the abduction or wrongful retention of American children under any circumstances and will make foreign governments pay a price if they essentially encourage and reward such conduct through financial and other direct support to abductors-, and,
- 3) Reform of current US law and practice (both civil and criminal) that cart work against American citizens, thus aiding and abetting the abduction of American children by foreign citizens and their governments.

In view of the overall poor performance of the State and Justice Departments for many years, receivership is necessary. Accordingly, the following proposals do not constitute micro- management.

### **1) US CENTRAL AUTHORITY PROPOSALS:**

A) Amend ICARA if necessary or otherwise direct that the US Central Authority for the Hague Convention be shifted immediately from the State Department to the Civil Division of the Justice Department (with the State Department directed to provide all support and assistance requested), taking into account the need to improve such areas as:

- training and expertise of personnel
- continuity and institutional memory of personnel
- number of personnel available
- caseload of personnel
- quality, quantity, and nature of legal support available
- the balance between child abduction/retention cases and “good relations” in bilateral relations
- the role of regional bureaus and American embassies
- general openness and a willingness to provide left-behind American parents with all available information and documentation

B) Direct that NCMEC cease handling incoming cases and play the same role for flouting cases (i.e., abductions from the US and retentions of American children abroad) that it has been playing for “incoming” cases, with a mandate for assertive advocacy on behalf of American parents on all fronts

## **2) HUMAN RIGHTS AND PREVENTION, PUBLICITY, AND ACCOUNTABILITY**

### **PROPOSALS:**

A) Human Rights: In the “children’s rights” section of the annual human rights report on each country, direct that the child custody system be summarized, including gender bias or bias against foreigners based on statistical evidence, enforceability of visitation/access for noncustodial parents (i.e., is there anything comparable to contempt of court?), payment of legal fees for host country nationals in custody or abduction cases, criminal legislation that protects abductors/withholders, compliance (or not) with the relevant provisions in the Convention on the Rights of Child on the role of both parents, the right of children in international cases to spend time in both countries, etc. The US is not a Party but has signed and complies with the relevant provisions to a far greater extent than most States Parties.

— Each year, the annual human rights report is eagerly awaited, widely disseminated, and, unlike most government reports, widely read throughout the world. One important function that the annual human rights reports should perform is prevention, as “human rights advisories” comparable to travel advisories; i.e., to alert potential victims of current and/or ongoing, systemic human rights abuses. If just one child from ANY country is saved from being lost because a judge, attorney, parent, or family friend reads or hears about government-supported child abduction/retention in a given country, then an accurate and complete report will have accomplished something both worthwhile and right. An accurate and complete report on countries such as Sweden would constitute a great service to American and other parents who might be warned in time to avoid losing their children.

— This subject belongs in the Human Rights Reports on its merits based on the numerous provisions in international human rights instruments that are violated by foreign governments in these cases. The First Lady has been right morally and legally in repeatedly declaring that international child abduction and retention are a human rights matter. State Department opposition is ludicrous, especially in view of what IS covered in the reports already and the fact that this is a systematic human rights abuse against Americans, whereas the current reports are devoted almost exclusively to what foreign governments do to their citizens.

B) Enact a permanent annual reporting requirement on Hague Convention Compliance to cover retention cases and any case where the child is not returned to the United State not resolved within 6 months, and to include lists of countries that do not have anything comparable to contempt of court and cannot enforce their own civil court orders, that pay the legal

fees of their abductors/retainers, that have criminal legislation which effectively protects their abductors/retainers, etc.

### **3) BILATERAL RELATIONSHIPS**

**PROPOSAL:** Review what type of relationship the United States should have with governments that engage in the following conduct and attach consequences such as no new law enforcement treaties or child support enforcement agreements if they:

- are directly engaged in facilitating, financing, otherwise supporting, and rewarding criminal conduct against American citizens
- have in place any elements of a governmental child abduction system
- have refused return of American children abducted/retained in violation of US law or court orders
- have unresolved cases of abduction/retention of American children with no meaningful or enforceable access for the American parent
- use their law enforcement authorities aggressively against American parents whose children have been abducted/retained and rarely if ever use them to assist American parents
- have failed to compensate American parents of abducted/retained children for their legal and other expenses
- abuse their sovereign immunity by financing litigation in US courts against American parents while claiming that the cases are private custody disputes and refusing to respect/enforce results adverse to their citizens

### **4) EXTRADITION**

**PROPOSAL:** Direct that the United States inform all extradition treaty partners that the US will not extradite its nationals for the offense of parental child abduction or related offenses to any country that will not extradite or effectively prosecute its nationals and will not fully comply with its obligations under the Hague Convention.

### **5) MUTUAL LEGAL ASSISTANCE TREATIES (MLATs)**

**PROPOSALS:**

A) Consider whether the United States should provide assistance against a left-behind Ameri-

can parent in any case where there has been a child abduction/retention in violation of US law or court orders AND whether the United States should provide assistance under any foreign law that criminalizes the attempts of custodial parents (sole or joint) to exercise their parental rights in response to abduction/retention of their child(ren). (e.g., See attached Swedish penal law that has been used against several American parents of abducted/retained children)

B) Refuse to sign or ratify an MLAT with any country that consistently supports international child abduction such as Sweden, in view of participation by Swedish police and prosecutors in the commission of Federal and state felonies against American citizens, Sweden's blatant and continuing violations of its obligations under related treaties, the unacceptable elements of Sweden's legal and social welfare system (summarized above), and the current and past cases of criminal conduct and human rights violations against American children and their parents directly facilitated, financed, rewarded, and supported in every conceivable way by the Government of Sweden.

C) Deliver a message comparable to the following one that should be delivered to Sweden to any country that engages in similar conduct; i.e., that no further consideration will be given to moving forward on a mutual legal assistance treaty (MLAT) until the Government of Sweden:

— terminates its comprehensive participation in ongoing Federal and state crimes against American citizens, in particular the International Parental Kidnapping Act of 1993 (18 USC 1204) and the comparable laws of each state

— acknowledges that American children over whom Swedish courts exercise custody jurisdiction are completely lost to their American parents unless the Swedish parent decides otherwise, and takes effective remedial actions

— eliminates the Swedish Government Child Abduction System (see above), starting with acknowledgment and elimination of the 5 pillars of the System (no principle of international comity in the Swedish legal system, undeniable bias by Swedish courts against non-Swedish fathers in regular custody proceedings and guaranteed sole custody awards for Swedish child abductors, nothing comparable to contempt of court to enforce access/visitation, unlimited government financing of legal fees and other expenses of Swedish abductors, and aggressive Swedish law enforcement use of a criminal statute that targets non-Swedish fathers)

— resolves satisfactorily all pending cases of child abduction/retention by Swedish citizens through return of the children to the United States and putting in place immediately enforceable criminal remedies against the Swedish citizens involved to prevent any recurrences

— implements and demonstrates the effectiveness of reforms of its legal and social welfare system to deter or quickly resolve in an acceptable manner all future cases, including in particular unsupervised and immediately enforceable access to the children concerned guaranteed by something comparable to criminal contempt, termination of legal aid for child abductors in civil proceedings, and streamlining its legal system to prevent endless appeals and delays

— repeals its criminal law directed against non-Swedish fathers attempting to exercise sole or joint custody rights over children abducted or withheld by Swedish mothers

— directs its police and prosecutors to cease harassing and attempting to intimidate American and other parents of abducted/retained children who attempt to exercise their custody rights

— compensates American parents of abducted/retained children for all expenses of litigation financed by the Swedish Government in both Sweden and the US, as well as all other costs and damages resulting from Sweden's failure to comply with its treaty obligations under the Hague Convention on the Civil Aspects of International Child Abduction and the family/parent provisions of the Convention on the Rights of the Child

— halts its abuse of sovereign immunity in aggressively litigating against American parents in US courts with no intention of respecting or enforcing results adverse to the Swedish citizen

— demonstrates that it will extradite or effectively prosecute Swedish parents who engage in child abduction/retention

## **6) CHILD SUPPORT ENFORCEMENT**

**PROPOSAL:** Terminate the State Department authority in P.L. 104- 193 (Section 459A) or at least amend it to:

- a) prohibit any child support enforcement arrangement with a country that does not have a legal system providing prompt, adequate and effective enforceable, unsupervised access/visitation **IN THE UNITED STATES** by means of something comparable to contempt of court
- b) prohibit any child support enforcement arrangement unless it contains ironclad guarantees that no American parent of an abducted/retained child will be affected, harassed, or penalized in any way **AND** it expressly excludes any case where there is or has been at any time:

—a violation of a US custody order or US custody law

—a violation of a Federal or state criminal law

—a denial of a request for return of the child(ren) under the Hague Convention or a failure

of the foreign Central Authority to comply with other Convention obligations  
—termination or reduction of any support obligation by a US court  
—an unpaid judgment or fine imposed by a US court on the foreign parent  
—a failure by the foreign government or its courts to provide rapidly enforceable, unsupervised, and generous visitation in the United States with police assistance and with no legal aid provided to the foreign parent violating a foreign or US custody order  
—an inability or refusal by the foreign government/courts to control the conduct of the foreign parent through contempt of court or other effective means  
—an inability or refusal by the foreign government/courts to protect and promote the exercise of parental rights by the American parent

## **7) IMPLEMENTATION OF THE INTERNATIONAL PARENTAL KIDNAPPING ACT OF 1993, 18 US 1204**

**PROPOSAL:** Either mandate Justice Department enforcement of the Act or repeal it, in view of the foreign government efforts to use the Act against Americans noted above. At present, the law is primarily used against Americans and rarely enforced by the Justice Department.

— if not repealed, require an annual DOJ report on the number of requests from parents or their counsel for indictments, number of indictments, number of extradition requests, number of actual prosecutions, etc.

## **8) PRIVACY ACT**

**PROPOSAL:** Require that left-behind parents be provided with the option (in writing) to waive all Privacy Act rights so that their names can be given to parents involved with the same country and to organizations (such as NCMEC) that can help.

— Prohibit use of the Act to withhold any information or documents from left-behind American parents

— Prohibit use of the Act on behalf of abducted American children or abductors (even if US citizens) as a basis for withholding information or documents from left-behind American parents

## **9) FREEDOM OF INFORMATION ACT (FOIA)**

**PROPOSAL:** Prohibit use of FOIA as a basis for refusing release of ANYTHING and EVERYTHING to American parents in child abduction/retention cases (information, documents, diplomatic and other government-to-government correspondence, etc.) these are not matters of national security; a left-behind American parent has an absolute right to know everything that his government has done or failed to do to obtain the return of the American

children concerned

## **10) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITIES ACT**

**PROPOSAL:** Create an exception to the FSIA giving American citizens a cause of action in US district courts against foreign governments (and all their assets in the United States) that directly engage in, facilitate, or otherwise support criminal conduct against them and their children

## **11) BILATERAL CLAIMS**

**PROPOSAL:** Consider the use of bilateral US Government claims on behalf of American children and their parents against foreign governments that have permitted their nationals to abduct/retain American children (and perhaps provided assistance and support)

## **12) OFFICE OF FOREIGN MISSIONS**

**PROPOSAL:** Require OFM to:

A) regulate and monitor the hiring and payment by foreign governments of American attorneys in cases of abduction/retention of American children where US civil/criminal law or US court orders have been violated, and

B) monitor and discourage any harassment of American citizens by foreign government agencies demanding either “child support” for abducted/retained American children or reimbursement to the foreign government of the legal fees it has paid for someone who has abducted or retained American children

## **13) INTERPRETATION OF THE HAGUE CONVENTION**

**PROPOSAL:** Direct that the Executive Branch inform all US courts and Hague Convention countries that the term “grave risk” in Article 13 of the Convention (as a grounds for not returning a child) should be interpreted to include situations where the country concerned cannot provide enforceable access or visitation owing to the absence of anything comparable to contempt of court in its legal system.

**SPECIFIC PROPOSALS (FOR BOTH THE UNITED STATES GOVERNMENTS AND OTHERS) TO IMPROVE IMPLEMENTATION OF THE HAGUE CONVENTION AND TO COMBAT INTERNATIONAL CHILD ABDUCTION AND WRONGFUL RETENTION: ACCOUNTABILITY, PREVENTION, IMPLEMENTATION OF INTERNATIONAL TREATIES, REMEDIAL ACTIONS**

### **1) ACCOUNTABILITY**

At present, there is no meaningful accountability for any of the entities or officials with the responsibility of dealing with abduction/retention (i.e., governments, Hague Convention central authorities, foreign ministries, justice ministries, police, prosecutors, etc.). A goal for the United States should be to create such accountability, primarily through publicity and dissemination of information in all possible ways, both on a case- by-case basis and for countries whose overall legal and other institutions provide a system that supports abduction/retention in any way.

**2) PREVENTION** (through definitive and reliable sources of information to ensure that parents, judges, attorneys, and law enforcement authorities know the odds of children returning from each country in the world)

A) Continuous Dissemination of Information by means of a Web Site and an annual published Report (like Amnesty International's annual country reports) under US Government, NCMEC, or other auspices, with a database containing OBJECTIVE and FACTUAL information on each country's

— legal system (comity for foreign custody orders or laws? Enforceable visitation or other civil court orders? criminal laws that protect abductors/retainers?)

— social welfare system (payment of legal fees for abductors/retainers? payment of child support to abductors/retainers? government-paid psychiatrists/psychologists available to support abductors/retainers?)

— child custody practices (statistics showing results of custody proceedings by gender and nationality)

— Hague Convention performance (average duration of proceedings? Actual return rate? access issues?)

Explanation: A major purpose of such a web site is to enable judges from South Africa to Idaho to Singapore to have instant access to definitive information that tells them whether children in either a Hague or regular custody case will return (if one parent resides locally) and/or have access in any way to both parents if allowed to leave the jurisdiction (e.g., all judges and governments should know that children that end up in most European civil law countries are completely lost to parents from other countries UNLESS the local PARENT decides otherwise). A further purpose is to identify countries with legal and social welfare systems that are so clearly INCOMPATIBLE with Hague Convention and Rights of the Child Convention obligations (Articles 9, 10, 11, 18, and others) as to guarantee successful child abduction/retention by their citizens. NCMEC and the Task Force must have the courage to identify publicly through all available media the countries that are the worst offenders, both

in specific cases AND in the availability of their legal and social welfare systems to encourage, facilitate, finance, and otherwise support child abduction/retention by their citizens or residents

B) The US Government Hague Convention Compliance Report (mandated by legislation passed in October 1998)

This Report should be made a permanent annual reporting requirement for the Department of State, should be viewed as an international resource (like the web site described above and the current US annual human rights reports), and should be broadened to include all children not returned within 6 months, objective information on each country's legal and social welfare systems, and non-Hague cases and countries. NCMEC and all other interested parties should closely review these reports and be a "truth squad" (i.e., a sort of "State Department Watch") to ensure accurate and complete reporting by the Department of State whether or not there is outside pressure from Congress, the media, and the public.

C) The Annual Country Reports on Human Rights

These reports prepared by the Department of State and issued by Congress are now an international resource for all governments, academia, and private individuals and organizations. However, despite a section on "children's rights" in each country report, these reports are now silent on the human rights violations inherent in international child abduction and retention facilitated, financed, otherwise supported, and rewarded by governments. Every country in the world is a Party or signatory to the Convention on the Rights of the Child, and some of the worst offenders in this area are also Parties to the Hague Convention and the European Convention on Human Rights.

Congress should direct the State Department to address governmental conduct relating to child abduction and retention in the human rights reports and acknowledge that the Hague Convention IS a human rights treaty, particularly since the status quo aids and abets the conduct of the governments, especially in Europe, that maintain child abduction/retention constitute merely "private custody disputes"

D) UN Committee on the Rights of the Child

The State Department and NCMEC should submit country reports (and complaints about legal or social welfare systems that virtually invite child abduction and retention) to this implementation body for the Convention on the Rights of the Child to create demands for changes in laws, policies, and practices

### **3) IMPROVED IMPLEMENTATION OF THE HAGUE CONVENTION**

- A) Abuse of Article 13: The US Government and NCMEC should compile and publicize the increasingly creative abuses of Article 13b (grave risk to the child as a grounds for denying return applications)
- B) Psychological effect of abduction/retention on victims. The US Government and NCMEC should publicize both the Stockholm Syndrome and the Parental Alienation Syndrome
- C) Access/custody during the Hague process: The US Government and NCMEC should publicize the virtually complete failure of the Convention's access provisions and the practices of many countries that allow abductors/retainers to control access to the child(ren) during the Hague process, especially when return orders are stayed pending appeals by abductors/retainers (i.e., courts should shift temporary custody to the left- behind parent or at least enforce substantial access)
- D) Training of judges: The US Government and NCMEC should identify and publicize the Hague Parties that fall short in this area and disseminate a model- training package (perhaps based on the US and British packages)
- E) "Two track" court systems: The US Government and NCMEC should declare the incompatibility with Hague Convention obligations of legal systems that use a separate administrative court system for Hague cases while handling custody cases in regular courts that may proceed with jurisdictional and other disputes while a Hague application is still pending
- F) Performance of Central Authorities. The US Government and NCMEC should evaluate central authorities and publicize cases where a central authority does far more for its citizens who abduct/retain children than some central authorities do for their citizens who are victims (e.g., Sweden compared to the US)
- G) Length of process: The US Government and NCMEC should gather and disseminate data on average duration of the Hague process in each country (bearing in mind that returns after a lengthy process are better than quick final denials!)
- H) Enforcement: The US Government and NCMEC should shine the spotlight on all countries with legal systems that do not permit effective enforcement of Hague return orders, access, visitation, etc.
- I) Limit appeals: The US Government and NCMEC should publicize legal systems that allow essentially allow appeals and/or the reopening of Hague return decisions until their citizens win
- J) Meaning of Article 1: The US Government and NCMEC should publicize the extent to which Article 1 of the Convention is meaningless (i.e., that the object and purpose of the

Convention is to ensure that Parties respect the laws of other Parties concerning child custody and access)

K) Legal Aid: The US Government and NCMEC should publicize the extent of legal aid provided by each country, ESPECIALLY situations where governments finance their nationals who engage in abduction/retention while their victims are up against that government's deep pocket in litigation in both countries

L) Nullification by European system: The US Government and NCMEC should publicize the fact that abductor/retainers from ALL European countries may be able to nullify even Hague return orders from the highest courts of their countries by utilizing the European human rights commission/court in Strasbourg

M) Entitlement of left-behind parents to information: The US Government and NCMEC and the Task Force should press all governments to provide all information and documents in every case to left-behind parents, including diplomatic notes

#### **4) REMEDIAL ACTIONS**

The US Government and NCMEC should utilize all means on all fronts to produce:

A) Access/visitation regimes in both Hague and regular custody cases with effective sanctions and police assistance to deal with parents who do not cooperate

B) Widespread Ratification of the 1996 Hague "Protection" Convention WITH EFFECTIVE IMPLEMENTING LEGISLATION to avoid the current situation with both the Hague Convention and the Rights of the Child Convention (i.e., widespread ratification with no underlying implementing legislation by some of the most self-righteous and worst offending Parties, such as Sweden, Germany, Austria)

C) Linkage to law enforcement treaties and child support agreements to prevent the worst offending countries from additional one-way benefits comparable to those they now enjoy under the Hague Convention

D) Bilateral Agreements on custody and visitation with the worst offenders, as contemplated in Article 11 (2) of the Convention on the Rights of the Child

E) No closing of cases and "writing off" of American children that other governments refuse to return

F) Inclusion of child abduction/retention as a major issue in bilateral relations

G) Extradition by all countries of their citizens for child abduction/retention

H) Elimination of government financial support for abductors/retainers in the forms of unlimited legal fees at home and abroad, abusive and frivolous litigation in the left-behind parent's country, assistance to abductors/retainers from criminal legislation (and police and prosecutors), payment of child support to abductors/retainers, availability of government psychiatrists or psychologists to assist with bogus Article 13 defenses, etc.

I) Ability of left-behind parents to penetrate sovereign immunity and bring lawsuits in the courts of their country for damages against governments that facilitate, finance, or otherwise support criminal conduct against them (i.e., abduction/retention of their children)

J) Bilateral claims against governments that facilitate, finance, or otherwise support abduction/retention by their citizens or residents

Mr. Chairman, in an era of budget constraints, it is reasonable for Congress and the American people to ask what US Government interest is more important than protecting our youngest citizens from the impact of crime. And international parental child abduction or wrongful retention of children are crimes, as well as human rights violations. The Hague Convention is a noble effort to remedy criminal conduct by civil means, but all too many countries (notably European civil law countries) knew at the time they ratified the Convention that their basic child custody laws and institutions were (and still are) incompatible with full compliance.

All of us are well aware that there are many ways to lose a child, none of them acceptable. But foreign government support for and participation in the loss of a child is intolerable. To a large extent, these crimes and human rights violations against American children and their parents succeed because the foreign governments concerned are confident that there is simply no downside risk; i.e., no real-world consequences for ignoring or dismissing the US Government's interests and views. This guarantees future cases. As a father who came within 18 hours of regaining his daughter only to have a last-minute stay from a Swedish court change our lives forever, I can only express the hope that this Committee and Congress in general will ensure that there will be consequences in the future for governments that facilitate, finance, otherwise support, and reward the international parental child abduction and wrongful retention abroad of American children.

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INTERNATIONAL CHILD ABDUCTION: THOMAS A. JOHNSON,  
Congressional Testimony, 10-14-1999.*

STATEMENT OF THOMAS A. JOHNSON

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(TESTIFYING AS THE PARENT OF AN AMERICAN CHILD

WRONGFULLY RETAINED IN SWEDEN)

BEFORE THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

UNITED STATES HOUSE OF REPRESENTATIVES OCTOBER 14, 1999

Implementation of The Hague Convention  
on the Civil Aspects of International Child Abduction

This statement is submitted solely in my personal capacity as an American citizen and as the father of Amanda Kristina Johnson, an American child wrongfully retained in Sweden. Although I have been an employee of the U.S. Department of State for more than twenty years, I make this statement as a private citizen and do not in any way purport to represent or speak for the Department of State, as will be obvious to any reader. I have taken annual leave to be here today and have not used government resources to prepare this statement.

Before proceeding, I would like to express my appreciation to Congressman Gilman for his commitment to finding ways to prevent and remedy international child abduction and retention abroad, for his willingness as Chairman of the Committee to schedule this hearing to learn how and why the system has failed so many abducted American children and their left-behind parents, and for his personal efforts to help children subjected to this crime and human rights abuse. I am also grateful to Congressman Smith and his staff for their legislative drafting efforts, as well as to other members of the Committee and the House Caucus on Missing Children for their interest. Finally, the dedication and hard work of the Committee's staff in preparing for this hearing and assisting individual citizens on a daily basis merits the admiration and thanks of all left-behind American parents. In the midst of an otherwise shattering experience for all such parents, this Committee's legislative work and other recent Congressional initiatives, despite Executive Branch opposition and obstruction, have been among the few encouraging developments.

Mr. Chairman, the norm for American parents in the vast majority of these cases is no return of the child under the Hague Convention or otherwise, no possibility of gaining extradition of the abductor because the Executive Branch has negotiated one-way extradition treaties, no possibility of enforceable access to or visitation with the child because most foreign legal systems have nothing comparable to contempt of court, and no effective assistance from the U.S. Government, which in fact stands ready to assist the abductor and his/her supporting government through enforcement of foreign child support orders and extradition of American parents who rescue their children.

Mr. Chairman, my daughter's individual case is summarized toward the end of this statement for the record, but most of the statement concentrates on what necessarily must be the Committee's primary focus: remedial actions that will help all Americans. That said, it is important at the outset to note the human impact of these cases and the truly barbaric conduct of governments such as Austria, Germany, and Sweden that enables their citizens to abduct and wrongfully retain American children with impunity. Amanda has not seen her American family, friends, school, church, and home environment for more than five years. She has several grandparents here, but none in Sweden. She has two baby sisters here whom she has never met, with another due next month, but no brothers or sisters in Sweden. Amanda's abductor could not have succeeded without the Swedish Government's comprehensive financial support and other forms of assistance. And governments such as Sweden that virtually encourage child abduction and retention by their citizens could not succeed without the U.S. Government's silence, refusal to make them pay any price for their treaty violations and human rights abuses, and failure to protect American citizens. That is what this statement is about, together with proposed remedies. In particular, the statement addresses:

—The need to publicize and punish direct foreign government support for the abduction and wrongful retention abroad of American children, in violation of the Hague Convention and international human rights instruments

—The need to publicize and counter foreign legal systems that ensure the complete loss of American children not returned under the Hague Convention and then subjected to foreign custody jurisdiction because these legal systems lack contempt of court and cannot enforce access or visitation (i.e., cannot control the conduct of their citizens or protect the parental rights of American parents in child custody and visitation matters)

—The need for enactment of effective preventive and remedial measures, such as those in the State Authorization Bill of each house (Section 203 of H.R. 2415 and Sections 201-203 of S.886), and for accountability within the Executive Branch concerning the handling of these cases and the obstruction or disregard of all Congressional efforts to help

—The indefensible withholding of documents and information from American parents

—The need for Congress to mandate that the National Center for Missing and Exploited Children (NCMEC) shift from helping foreign parents in "incoming" cases to helping Americans in "outgoing" cases (as NCMEC prefers), hold the case files instead of the Department of State, and play an assertive advocacy role on behalf of American children and their parents; today, left-behind American parents must deal with hostile bureaucrats while foreign parents benefit from NCMEC's superb capabilities at U.S. taxpayer expense

—The need for Congress to reject the "private custody dispute" disinformation campaign,

the two-front war presented to left-behind American parents by the Executive Branch (the threats of extradition and child support enforcement), and the effective abandonment or “writing off” of American children through State Department closure of their cases

—The harmful conduct of the State and Justice Departments during the past year, as reflected in the Hague Convention Compliance Report to Congress, the Task Force Report to the Attorney General, and opposition to all pending legislation

—The problems of dereliction of duty, dedication to maintenance of the status quo and keeping other governments happy, incompetence, inexperience, and mismanagement within the Executive Branch

—Human rights violations inherent in government facilitation and support of child abduction/retention, and the disconnect between the First Lady and the State Department on this subject

—Essential elements of any credible General Accounting Office investigation and report

—Specific recommended Congressional actions (most of which require only political will rather than tangible resources)

—Specific proposals for improved implementation of the Hague Convention

—a Summary of the Swedish Government System of Abduction and Wrongful Retention of Children (as an example of what the U.S. Government should be drafting and disseminating to all U.S. courts, law enforcement authorities, family law specialists, and the public on each Hague and non-Hague country that facilitates or supports international child abduction and wrongful retention)

—The latest unsuccessful effort to persuade the Human Rights Bureau (DRL) at the State Department to include this problem in the annual country reports on human rights

—a Submission to the United Nations Committee on the Rights of the Child concerning Sweden’s systematic and institutionalized violations of the Convention on the Rights of the Child (as an example of what the U.S. Government should be filing with the Committee as a signatory to the Convention and with the European Commission/Court of Human Rights as a nation whose citizens are being subjected to violations of the European Convention on Human Rights)

THE CURRENT SITUATION

Mr. Chairman, the past year has been a very good one for the abductors of American children. With all too few exceptions, they have enjoyed great success, thanks to the foreign governments that support them in a variety of ways and the U.S. Government that fails to provide effective assistance to its citizens who are the victims of these crimes and human rights abuses. At the same time, the U.S. Government and courts keep foreign governments happy by generally returning children to foreign parents, thus helping to maintain the status quo. Abductors of American children will continue to succeed, unless Congress takes specific actions detailed later in this statement to:

- establish accountability (e.g., annual abduction and human rights reporting to Congress as proposed in the State Department Authorization Bill)
- require effective preventive measures (e.g., dissemination of reports and advisories on foreign legal systems via the Internet and all other possible means to U.S. courts, family law specialists, law enforcement authorities, and the public)
- promote full compliance by foreign governments with the Hague Convention and other relevant international instruments, and
- ensure remedial measures in response to treaty violations.

Mr. Chairman, it is common knowledge that the loss of a child in any manner is one of the worst events that can occur in a person's life. It is likely that every member of this Committee and its staff has in some way been exposed to such tragedies. The loss of any child for any reason is a terrible thing for all concerned. But government-supported abduction and retention of children is a particularly intolerable way to lose a child, especially when the government concerned does so in violation of treaty obligations relied upon by other governments and their citizens. The fact that the Executive Branch seemingly cannot or will not comprehend is that American and other victims of parental child abduction by foreign citizens are often up against the full weight of the foreign government concerned from the start of a case, even if that government is a Party to the Hague Convention.

Too many Americans, Mr. Chairman, have relied on the Hague Convention to their detriment, with their attention thus diverted from possibly more effective options. The issue is not elimination of the Hague Convention process, since it should be preserved if it gains the return of even one child each year that would otherwise not come home. But the State Department has allowed the Hague Convention to become a one-way street enabling our treaty "partners" to benefit from the consistent return of children from the United States, many of whom arguably should not be returned because there will be no enforceable visitation for the American parents. These foreign governments generally fail to reciprocate by returning children to the United States, where contempt of court is available to enforce access and visitation for foreign parents.

Mr. Chairman, the U.S. Government has failed to adjust to the reality that the majority of abductions were by fathers when the Hague Convention was negotiated, but, today, an even

higher percentage of abductions are by mothers. The overwhelming majority of States Parties to the Hague Convention never changed their domestic law or their cultural beliefs, so that children can or will be taken away from mothers who abduct or wrongfully retain them. The norm facing the United States is abductions by Middle Eastern fathers to non-Hague countries and by European mothers to Hague countries. The latter have conclusively demonstrated that they will rarely treat an American father better than they will treat their own fathers. In short, these European countries may choose to maintain extreme gender and national bias (as seen in Germany's treatment of Lady Catherine Meyer). But they do not also have the right to hold themselves out as respectable States Parties to the Hague Convention and Convention on the Rights of the Child.

The State Department has obligations both to inform Congress, all U.S. courts, family law specialists, law enforcement authorities, and the public about this state of affairs so as to reduce the instances of these persistent Hague violators (i.e., European and other civil law countries) enjoying the benefits of the Convention while denying them to American parents, AND to pressure these countries either to engage in radical reform of their legal and social welfare systems OR to withdraw as Parties to the Hague Convention and the Convention on the Rights of the Child (which has numerous provisions that are violated by government support of abduction and retention). In all too many cases, American citizens fatally rely on the mere fact that a country is a Party to the Convention and presumed to comply with it. The State Department has an obligation to set the record straight publicly and loudly at home and abroad, just as it does country-by-country worldwide with travel advisories covering crime, disease, and terrorist threats. The probable permanent loss of children guaranteed by the legal systems of most Hague (and non-Hague) countries (due to unenforceable visitation) is clearly just as serious as the matters covered in the current advisory system.

Mr. Chairman, it is important, of course, not to lose sight of the fact that foreign governments are the source of the problem. But no one seriously questions that any longer. As discussed below, governments like Austria, Germany, and Sweden are taking good care of their citizens while violating the human rights of Americans with impunity. Why should they unilaterally change? They have been given no incentive to do so by the U.S. Government.

## IMMEDIATE REMEDIES

Mr. Chairman, this intolerable and indefensible situation would begin to improve literally overnight, if the Executive Branch took several actions that cost nothing. The first such action is simply to begin publicly telling the truth about these cases. If nothing else, however, the conduct of the State and Justice Departments during the past year has conclusively demonstrated that they will not take such actions voluntarily. Among other things, the Hague Convention Compliance Report submitted to Congress by the State Department violates both the letter and spirit of the statutory reporting requirement in P.L. 105-277, the Task Force Report to the Attorney General is an attempted fraud on Congress that has nothing to do with reality, all pending legislation (Section 203 of H.R. 2415 and Sections 201-203 of S. 886) has

been subjected to unprincipled opposition without any constructive alternatives suggested, NCMEC has been successfully pressured by the State and Justice Departments into continuing to assist primarily foreign parents at U.S. taxpayer expense with only limited help and information provided to American parents, and the senior State Department official responsible for this area (Assistant Secretary Mary Ryan) has declared in an appalling letter to Insight Magazine that these cases are essentially mere private child custody disputes and that we should be encouraged by a return rate for American children of well under 50 percent. The Ryan letter is particularly insulting to the memory of all abducted and wrongfully retained American children. Consequently, the only real hope for American children and their parents is that Congress will enact legislative directives that:

—require the State Department to submit and widely disseminate to U.S. courts, family law practitioners, and the general public by all possible means (including the Internet) an annual Hague Convention Compliance Report in accordance with the original version of Section 203 of H.R. 2415 (i.e., detailed information including country names on all cases where children have not been returned to the U.S. within 6 months and listings of all Hague Parties that do not have anything comparable to contempt of court in their legal systems to enforce Hague return or visitation orders, that pay legal fees for their abductors at home and abroad, that do not recognize the principle of comity, that have criminal laws directed against left-behind parents who attempt to exercise their custody rights, and so on)

—require the State Department to address family rights and parental child abduction in each country report of the annual human rights reports, in accordance with Section 203 of S. 886 as supplemented by subjects covered in the original version of Section 203 of H.R. 2415 (e.g., whether a country can and will enforce a child's right to have access to both parents even if they reside in different countries, whether a country provides financial support to its abductors, whether a country recognizes the principle of comity and respects the laws and court orders of other countries on custody and visitation, whether a country has criminal legislation that effectively shields its abductors and targets foreign parents attempting to exercise their custody rights, whether statistics show that a country's legal system demonstrates gender or national bias in child custody cases)

—require the State Department to disseminate an interpretation of Article 13b of the Hague Convention to all U.S. courts (with notice to all Hague Convention Parties and announcement at the next Hague Convention Review Conference) that “grave risk” to the child as a basis for non-return includes situations where the child(ren) would be returned to a country with a legal system that has no effective means of enforcing visitation in the United States (or anywhere else) for the American parent or enforcing any other aspect of its civil court orders (i.e., a legal system that has nothing comparable to contempt of court)

—require the State Department to conclude bilateral agreements with the worst offending countries concerning access and visitation

—prohibit the State and Justice Departments from assisting foreign parents in domestic litigation until they uniformly assist American parents in Federal or state court litigation financed by foreign governments and brought to challenge or subvert U.S. court orders

—require the State and Justice Departments to inform all extradition treaty partners that the United States will not extradite its citizens for the offense of parental child abduction to any country that does not extradite or effectively prosecute its nationals for that offense and does not consistently return requested children under the Hague Convention

—require the Executive Branch to transform its contract with NCMEC to process “incoming” cases into a contract for NCMEC to assist only with “outgoing” cases, to transfer all “outgoing” case files from the State Department to NCMEC, and to inform all Hague Parties that NCMEC will no longer assist with “incoming” cases

—mandate that NCMEC take an assertive advocacy role on behalf of American children and parents with BOTH foreign governments and the U.S. Government

—terminate the State Department’s authority under P.L. 104-193 (Section 459A) to conclude reciprocal child support enforcement agreements and require the State Department to inform the states that foreign child support orders should not be enforced in cases where the American parent has no enforceable visitation in the United States or there has been a violation of U.S. law or court orders, Federal or state felonies, failure to return a child under the Hague Convention, and so on

## RECENT EXECUTIVE BRANCH PERFORMANCE

“We cannot push too hard in the Johnson case because that might jeopardize the return of children in other cases.”

(Assistant Secretary Mary Ryan)

“I don’t work for the American people, I work for the Secretary of State.”

(Assistant Legal Adviser Catherine Brown)

“Why are you calling about the Johnson case? That case is closed.”

(Response to NCMEC by Ellen Conway of the Office of Children’s Issues)

Mr. Chairman, these are actual statements concerning my daughter’s case or child abduction generally made to me or others by State Department officials who are supposed to be responsible for obtaining the return of abducted American children. They will give you some idea of what American parents experience when they deal with the State Department, and why this function needs to be shifted elsewhere, with the Department placed in receivership in this area by Congress in the interim. The first statement is a classic expression of appease-

ment, as discussed below. The second may confirm many suspicions, but was also both honest and sincere, which is precisely the problem. And the third raises the issue of the State Department writing off American children by closing their cases as soon as the foreign government makes a final denial of the U.S. request for return. You know about this matter because the State Department told you that there were only 56 “unresolved” Hague cases in its Hague Convention Compliance Report to you last spring. As a Marine who was trained from Day 1 never to leave anyone behind and as a citizen who admires and supports the MIA effort, I find the bureaucratic closing of our children’s cases particularly offensive. My understanding is that no one, from the President on down, has the authority to write off American citizens, especially our youngest ones.

Today, Mr. Chairman, there is no accountability within the Executive Branch, few preventive measures to educate American courts and law enforcement authorities (let alone the public), no strategy to achieve full compliance with the Hague Convention and other applicable treaties, and no political will in the Executive Branch to take effective remedial measures. The reality is that foreign governments provide far more financial, law enforcement, and other assistance to their citizens and others who abduct or retain American children abroad than does the U.S. Government to the left-behind American parents. Worse still, the U.S. Government provides far more assistance to foreign citizens whose children are in the United States, often with good reason as discussed below, than it does to Americans whose children have been abducted or wrongfully retained abroad. U.S. tax dollars permit NCMEC to assist foreign parents in a variety of ways, while the American parents in those cases generally face extreme gender and/or national bias in the foreign courts concerned, and will not be able to obtain enforceable access or visitation with their children except perhaps in a few common law countries. It appears that the Executive Branch cares only about U.S. compliance with its treaty obligations and is unwilling to take any effective measures to ensure that there are negative consequences for foreign governments that consistently fail to comply with their treaty obligations to the United States and that support, in a variety of ways discussed in this statement, the commission by their citizens of Federal and state felonies against American children and their parents..

Mr. Chairman, in Amanda’s and so many other cases of children abducted and wrongfully retained abroad, the loss has occurred through a combination of Hague Convention violations and other human rights abuses by foreign governments, direct and substantial institutionalized support by these foreign governments for the abduction and wrongful retention abroad of American and other children, and overall conduct by the State and Justice Departments that, as a practical matter, creates a two-front war for Americans and facilitates the successful commission of these Federal and state felonies against American children and their parents. As a parents, all of us are also here because we do not want thousands of additional American or other parents to lose their children, which is a certainty unless Congress takes charge and enacts legislation or takes other actions along the lines suggested below to force the State and Justice Departments to carry out the most fundamental responsibility of any government:

to protect its citizens at home and abroad. Diplomatic and legalistic approaches alone will not work. They must be backed up by demands for reciprocity and a willingness to impose consequences on foreign governments that continue to provide any form of support to those who abduct and retain American children abroad.

In view of those realities, genuine and long-term improvement is unrealistic as long as the State Department remains the U.S. Central Authority under the Hague Convention and otherwise has the lead responsibility for child abduction matters within the U.S. Government. Most left-behind American parents would agree that the State Department has consistently shown that it lacks the competence, commitment, and political will to perform effectively in these cases, that its approach is to compartmentalize these cases at a low level to prevent any impact on bilateral relations, that its principal concern is ensuring that foreign governments have no complaints about U.S. treaty compliance, and that it has no strategy for dealing with foreign treaty violations and no intention whatsoever to do so. In my own case, relatively strong diplomatic notes to Sweden early on were undercut by the American Embassy in Stockholm failing to hand-deliver them, and thus delivering a clear message to the host government. More recently, despite continuing outrages in the case, the State Department has failed to respond to a Swedish diplomatic note of May 1997 or to send other communications with any teeth. Staff shortage is not the problem, since I supplied more than ten single-spaced pages of points from which to draw. While the Swedish Government routinely distributes all Swedish and U.S. Government documents to its citizen who abducted Amanda, Americans are told to file Freedom of Information Act requests. Earlier this year, an inexperienced State Department team spent a great deal of money in visiting the capitals of the worst European violators of the Hague Convention for consultations (including Austria, Germany, and Sweden), but there has been no report to the American parents concerned and no indication of any positive developments from this trip.

The situation for foreign left-behind parents is very different. According to statistics supplied to the General Accounting Office (GAO) by the National Center for Missing and Exploited Children (NCMEC), the combined efforts of the State Department, the Justice Department, U.S. courts, and U.S. law enforcement have ensured that more than 90 percent of children abducted to or retained in the United States in recent years have been sent back to foreign countries. Ironically, that includes virtually 100 percent to some of the worst offending countries, such as Sweden and Austria. Moreover, as explained below, many of these children were brought to or retained in the United States for valid reasons, such as the impossibility of their American parents receiving fair treatment or even enforceable visitation of any kind from the foreign courts concerned. These children should not be sent away from the United States. But they are, because the Executive Branch has failed to educate American courts and family law practitioners about the grave risks (within the meaning of Article 13b of the Hague Convention) of sending them to countries where they will be denied any contact with their American parents unless the foreign parent decides otherwise.

As described below, foreign government support for abduction and wrongful retention of American and other children continues unabated. Because American lawyers and U.S. Government officials continue to have great difficulty in comprehending or even believing the point, it cannot be repeated too often that parents in our position cannot gain legally enforceable access to or visitation with our children in the countries where they are held hostage, let alone the United States, unless the abductor permits it.

In other words, the reality that would be helpful for this Committee and Congress in general to address is that the problem goes well beyond the fact that foreign governments are violating their treaty obligations to the United States with impunity, refusing to return American children under the Hague Convention, stealing custody jurisdiction from American courts, and awarding sole custody to their citizens who have committed Federal and state felonies. Even at that point, one might reasonably assume, as I did, that the worst case scenario is being a noncustodial parent with only 4 to 6 weeks of visitation in the United States each year. Regrettably, the fact is that most American children are completely and permanently lost to their American parents, families, friends, and home environments.

After years of ignoring or not wishing to believe this reality, the State Department is reportedly contracting for a study to confirm what American parents have been saying all along: judges in European and other civil law countries have no effective means of enforcing their own orders. In nearly all Parties to the Hague Convention, therefore, refusal to grant a United States return request, followed by the exercise of regular custody jurisdiction, means the complete loss of the child(ren) concerned. Accordingly, Mr. Chairman, American parents of abducted children are, in most cases, faced with a clear choice: abandon their children or conduct a rescue operation. For those who make the latter choice, it is hoped that Congress will ensure that they are fully supported by the U.S. Government and that the current practice of subjecting them to a two-front war (e.g., by means of extradition) is terminated.

## THE PAST YEAR IN PARTICULAR

Rather than alleging dereliction or incompetence at the State and Justice Departments, it is really only necessary to look at Executive Branch actions and inaction during the past year. Such an examination greatly enhances our credibility and demonstrates more clearly than anything we can say the extent of bureaucratic bad faith, obstructionism, covering up, and devotion to the status quo in this area. The only good news is that now Congress has received the same treatment from the Executive Branch that we have and that the Executive Branch has confirmed everything we have been saying about it. You have been on the receiving end of the same attitude that we experience, particularly with regard to three matters: the State Department's Report to Congress on Hague Convention Compliance, the so-called Task Force Report to the Attorney General, and State Department opposition to proposed legislation.

## Hague Compliance Report

In this Report to Congress in Spring 1999, the State Department violated both the letter and spirit of P.L.105-277, the legislation that established the Hague Convention reporting requirement, by submitting an inadequate and unacceptable Report that itself makes the case for a renewed and more comprehensive reporting requirement. Congress asked for a listing of all unresolved cases but was given only 56 cases in which the foreign government has not yet definitively refused to return the child, not the hundreds or thousands of cases in which the American children have never come home. Congress asked for a list of countries with a pattern of noncompliance but was given only a short list that inexplicably omits Germany, one of the worst offenders. Congress asked for detailed information on the unresolved cases but was given utterly useless narratives that not only omit individual names but country names on the preposterous grounds of privacy. Whose privacy? The abductor, the supporting government, and the State Department? Left-behind parents rarely if ever want privacy. They want the world to know what has been done to their child(ren) and who has done it.

## Task Force Report to the Attorney General

The Attorney General promised this report to the Senate Foreign Relations Committee last fall in order to gain the release of 38 law enforcement treaties being held up because of the poor performance of the Executive Branch in the child abduction area. The Report submitted to Congress has virtually nothing to do with the realities facing American parents and is a blatant attempt to perpetrate a fraud on Congress by giving the impression that the Executive Branch intends to do something other than maintain the status quo. The Report is an example of the oldest game in Washington: production of a “blue ribbon” report by bureaucrats under fire to get Congress, the media, and the public off their backs WHILE CHANGING NOTHING. This Report is noteworthy only for what it omits and conceals. NCMEC recognized this early in the drafting process and withdrew from the project in a hard-hitting written dissent available to the Committee, but the fails to make clear that NCMEC is NOT one of the drafters. Any credible GAO Report would have to evaluate this Report in detail and should discuss the facts that the Report does not explain the discrepancies between the Report’s rhetoric and actual Executive Branch conduct (opposition to legislation, thorough reporting, release of documents to parents) and the innumerable gaps, ambiguities, and cover-ups in the Report, including:

- no game plan for diplomatic and other responses to foreign government Hague violations or other forms of support for abduction/retention of American children
- no mention of the central importance of the absence of anything comparable to contempt of court in most Hague countries, thus ensuring total loss of children not returned under the Convention
- no indication that anything other than the status quo will be maintained with business as

usual even with the worst violators of the Hague Convention and worst non-Hague countries —no revelation of the largely successful effort to freeze NCMEC out of “outgoing” cases —no clear recognition that these are not “private custody disputes” —no disclosure of how bad the numbers are (see NCMEC memorandum to GAO) —no recognition that a “grave risk” within the meaning of Article 13 of the Hague Convention exists from countries that cannot effectively enforce access or visitation —no recognition of the consequences of failing to educate U.S. courts about the nature of foreign government support of child abduction and retention —no hint of DOJ refusal to enforce the 1993 International Parental Kidnapping Crime Act —no hint of general DOJ refusal to request extradition —no acknowledgment of the human rights standards that are being violated and the differing approaches of the First Lady (who is legally and morally right) and the State Department —no mention of foreign government threats and demands against American parents concerning reimbursement of child support and legal fees paid to abductors —no mention that the Executive Branch fails to monitor domestic litigation against American parents financed by foreign governments —no strategy for dealing with extortionate demands by even the best Hague countries (e.g., the UK) for costly “undertakings” by the American parent, as in the Lebeau case —no acknowledgment that foreign governments claim “private custody disputes” while hiding behind their sovereign immunity in hiring and paying American lawyers to represent abductors in abusive litigation in U.S. courts intended to exhaust American parents financially —no hint of State’s negotiation of child support enforcement agreements with foreign governments without safeguards or exclusions to protect left-behind American parents —no revelation of State’s policy of closing cases and compartmentalizing them at the lowest level to avoid any impact on bilateral relations

### Legislative Proposals

The State Department failed to submit any legislative proposals, but used disingenuous and misleading arguments to oppose in an excessively destructive manner every Congressional initiative in the State Department Authorization Bill in both Houses (H.R. 2415—previously H.R. 1211—and S.886). At the same time, it is not clear that the State Department informed House proponents that some proposals concerning issuance of passports would impact adversely and unjustly on many left-behind American parents of abducted children.

Mr. Chairman, so many problems presented to Congress require large allocations of human and material resources to fix. This one does not. So many issues involve legitimate foreign interests or competing U.S. Government interests such as national security or major economic interests as possible bases for not assertively pursuing or defending the interests of American citizens. This one does not. So many international human rights and law enforcement problems cannot be addressed and largely remedied by means of the State and Justice

Departments simply telling the truth and exhibiting sufficient political will. This one can.

As demonstrated beyond any doubt by their conduct during the past year, the State and Justice Departments are dedicated to maintaining the status quo and will not change unless forced to do so by Congress. Although the status quo guarantees that increasing numbers of American children will be successfully abducted and wrongfully retained abroad, the State and Justice Departments appear sensitive only to foreign complaints and interests. As American parents and those who try to help them know all too well, neither the State Department nor the Justice Department has shown any significant improvement in performance during the last year, despite the Senate Foreign Relations Committee hearings on October 1, 1999, excellent legislation proposed by members of this Committee and your colleagues in the Senate, widespread media coverage (in the New York Times, Reader's Digest, Insight Magazine, and many other publications), the personal involvement of the First Lady, and the efforts of those who have established the International Center for Missing and Exploited Children. Those who abduct and wrongfully retain American children abroad have little to fear from the United States Government. This has been spelled out by reporters Dan Levine and Tim Maier in recent Reader's Digest and Insight Magazine coverage, respectively, with which The Committee may be familiar.

This past year also included the promotion of Assistant Secretary Mary Ryan to the highest possible rank in the U.S. Foreign Service, perhaps in part as a reward for compartmentalizing international child abduction in her largely ineffective Office of Children's Issues, so that the rest of the Department and our embassies abroad do not have to deal with American parents and so that "good relations" with other countries are not disrupted no matter how outrageous the conduct of the foreign governments involved. How much confidence should American parents have in the State Department when its highest rank and the responsibility for protecting American citizens overseas is given to someone who has actually said in my daughter's case "We cannot push too hard in the Johnson case because that might jeopardize the return of other children from Sweden." What was the basis for this statement by Mary Ryan? Direct or implied Swedish threats?

Possible Swedish government orders to its "independent" Swedish judiciary? Fear of Swedish noncompliance with treaty obligations in other cases via linkage? Belief in the effectiveness of appeasement?

Perhaps this Committee has heard a more classic expression of appeasement from a senior Executive Branch official. One hopes not. In other words, if we keep quiet and write off one American child, maybe countries such as Sweden will behave better in future cases. Of course, the opposite is true. Appeasement is no more effective in 1999 than it was sixty years ago. It remains an utterly contemptible and morally bankrupt policy, especially when the world's only superpower practices it in abandoning its children for nothing more than a mindless desire to be liked and to have good bilateral relations for their own sake.

Why should countries like Sweden, Germany, and Austria treat the United States with anything other than utter contempt in child abduction matters, as they do? They are doing a superb job of taking care of their citizens and shielding them from the consequences of their criminal conduct. If the United States does not care about its children, why should they? Why should they change their behavior in any way, when it is so beneficial to their citizens and when the United States has provided no incentive to do so, has generally proven inept by using inexperienced personnel to try to match wits with far more senior foreign officials, and fails to follow through in any practical way when it does do something, such as transmitting a diplomatic note of protest. On the one hand, the United States returns close to 100 percent of the children these countries request, even those who should remain here because their American parents cannot obtain from Swedish/German/Austrian courts due process of law and fair treatment in general or enforceable access and visitation in particular, while on the other hand such countries return only a small fraction of the children requested by the United States.

## GAO Report

As indicated above, a credible GAO report must thoroughly evaluate the Task Force to the Attorney General along the lines suggested and address those issue wholly apart from the context of the Report to the Attorney General. GAO has been supplied with the names and addresses of dozens of American parents, attorneys, and others familiar with the performance of the Executive Branch concerning international child abduction and retention. GAO needs to interview these people and form its own conclusions. Among other things, a GAO report should include:

- Scope of the problem with complete statistics
- Adequacy of existing legislation
- Adequacy of cooperation with NCMEC and American parents
- Refusal of State to include the subject in the Human Rights reports
- Adequacy of the Hague Convention Report to Congress
- Adequacy of Executive Branch cooperation
- Disparity between return rates from the U.S. versus to the U.S.
- Review of case files to ascertain adequacy of State services to parents
- State's criteria for closing cases
- Executive Branch strategy for dealing with violator countries
- Treatment of American parents (access to documents, protection from foreign child support demands, frequency of contact)
- Cooperation and support from embassies and the State Department overall

## HUMAN RIGHTS

As mentioned frequently in this statement, foreign government support of child abduction and retention is a human rights matter. The First Lady has made this point repeatedly, including at the inauguration of the International Center for Missing and Exploited Children on April 23, 1999 at the British Embassy. She is right legally and morally. Articles 9, 10, 11, and 18 of the Convention on the Rights of the Child, which the United States has signed, are directly on point. The UN Committee on the Rights of the Child considers abduction/retention a human rights matter accordingly and has recommended to Austria and Sweden that they improve their legislation concerning respect for foreign custody orders. In like manner, the European Commission/Court of Human Rights has considered cases involving the subject. The leading expert on the Hague Convention, Adair Dyer of Texas (the now-retired Hague Academy official in charge of the Convention), has declared "Of course the Hague Convention is a human rights treaty!" While the initial act of abduction or retention may not be a human rights violation per se, just as street crime in a foreign capital against Americans is not, it IS a human rights violation when foreign governments fail to provide American parents with any effective remedies and, worse, directly facilitate, finance, otherwise support, and reward this conduct by their citizens through a governmental system of the type described below in the case of Sweden. Taking into account the more than 2000 pages in the annual Human Rights reports devoted almost exclusively to what foreign governments do to their citizens in many areas less serious than child abduction, it is not asking too much for the State Department to address what foreign governments systematically do to American citizens in violating their human rights set forth in numerous human rights instruments.

Mr. Chairman, Congress estimated the number of internationally abducted or wrongfully retained American children at 10,000 when it passed the International Parental Crime Act of 1993. With the increasing failures of the Hague Convention on the Civil Aspects of International Child Abduction (less than a thirty percent return rate for American children), the virtual refusal of the U.S. Justice Department to utilize the 1993 Act when Hague remedies are inapplicable or have been exhausted, the worst offending countries rightly emboldened by the present certainty that they generally risk no real-world consequences or even adverse publicity, and the absence of adequate preventive measures, the situation is only getting worse for left-behind parents who play by the rules in both countries concerned. They need to know that foreign government compliance with the international legal obligations they have undertaken in ratifying the Hague Convention and applicable human rights treaties cannot be relied upon.

## FOREIGN GOVERNMENT SUPPORT FOR INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN

The principal purpose of this statement, as indicated above, is not only to discuss individual cases or countries, but rather to provide a general description of foreign government support

for the abduction and retention of American children, the response of the United States Government, and proposed Congressional actions to assist American children and parents affected by the crime of international parental child abduction and retention. Accordingly, the following information on my daughter Amanda's case and my experience with the Swedish legal and social welfare systems is provided primarily as a case study or as an example of what often confronts left-behind American parents.

## 1. Five Pillars of Governmental Child Abduction or Wrongful Retention

While the present overall Swedish legal and social welfare system may well be one of the worst adversaries that a left-behind American parent can face, at least some elements of that system exist in many other countries, especially in European civil law countries. The Swedish system includes all of what could be called the Five Pillars of governmental child abduction and retention: no principle of comity in the legal system, extreme gender or national bias in the courts, payment of unlimited legal fees for the child abductor at home and abroad, no enforceability of civil court orders (including child return orders and visitation orders), and criminal legislation that protects parents who abduct or wrongfully retain children. In a given case, only one of these five "pillars" may be enough to ensure a successful abduction or retention:

Regrettably, Amanda is only one of thousands of American children abducted or wrongfully retained abroad. As Congress recognized in passing the International Parental Kidnapping Crime Act of 1993 ("the 1993 Act"), Amanda's case and Sweden's indefensible conduct are not unique, although the facts and circumstances of Mandy's case are particularly aggravated. Despite the best efforts and intentions of Congress and some individuals in the Executive Branch in recent years to combat the continuing tragedy of international parental child abduction, the fact remains that American parents whose children are abducted or wrongfully retained abroad are all too often up against the full weight of foreign governments (including Parties to the Hague Convention such as Sweden) prepared to supply virtually unlimited financial and other resources (e.g., government child psychiatrists and psychologists) to assist their citizens who abduct or wrongfully retain children. What has happened to Amanda and me can happen to any American citizen, already has happened to many, and will unquestionably happen to more in the future, unless Congress acts to prevent "business as usual" with the governments involved and to provide other remedies. Without the help of Congress along the lines suggested below, more American citizens will continue to be victimized by foreign parents and their governments determined to abduct or retain American children, withhold them abroad, and ignore U.S. and international law. This statement is submitted in the hope that Congress will act quickly and decisively to help other Americans avoid the nightmare to which my family has been subjected.

## 2. No Enforceable Visitation or Other Parental Rights

As a preliminary consideration concerning any child abduction or retention involving Sweden (and most other European civil law countries), it must be noted that children not returned under the Hague Convention are likely to be completely lost to their American parents and families. The parental rights of an American parent may be effectively terminated by the inevitable grant of sole custody to the local national (or of joint custody in name only with the local national enjoying all the aspects of sole custody) when a court in a European civil law country exercises regular child custody jurisdiction. In Sweden, for example, a non-Swedish, non-custodial parent has no enforceable parental rights, and unenforceability continues to be the key element of the Swedish system now that joint custody on paper has become the norm for cosmetic purposes. The Swedish legal system and individual judges cannot control the conduct of Swedish parents (or otherwise protect the rights of foreign parents) because there is nothing comparable to contempt of court or any other effective means of enforcing visitation or access under a Swedish custody order. For Amanda, who lived with me half the time for several years and travelled freely with me both in the U.S. and Europe, even supervised visitation in Sweden is totally unenforceable and at the whim and mercy of the child abductor.

A new Swedish law that entered into effect one year ago permits Swedish judges for the first time to impose joint custody over the objections of one parent. That occurred in my case during a Swedish court hearing in February 1999 and inspired some in the State Department and the American Embassy in Stockholm to proclaim that the problem was now solved. This again reflects the limited knowledge and expertise of the State Department personnel who work on these cases. The February 1999 ruling was reversed by the same judge in June 1999 (with sole custody for the Swedish mother restored) and then reversed again by an appeals court in September 1999 to give me joint custody. None of this has any practical effect in terms of unsupervised visitation with Amanda in the United States (or Sweden for that matter). Just as other seemingly progressive elements of Swedish child custody law and policy only apply when both parents are Swedish (e.g., shifting sole custody away from a parent that withholds a child, unless, of course, the consequence is that the child leaves Sweden), this new law has not been applied with any practical effect in cases involving non-Swedish parents. The terms of any Swedish joint custody order is just as unenforceable as any visitation awarded under Swedish sole custody orders. Nothing has changed in that regard, although intense and sustained international pressure on Sweden might bring about reforms that include mechanisms comparable to contempt of court.

For the reasons just given, I have spent more than \$200,000 of my savings to avoid Swedish custody jurisdiction because of the guaranteed consequences: a court order that even some U.S. authorities may view as giving the “color of law” to termination of the child’s American life and my parental rights. Amanda is not the first American child to be subjected to these violations of her human rights by Sweden, she is not the only one at the moment (e.g., the child of Mark Larson of Orem, Utah; the child of Ian McAnich of

Dallas, Texas; the children of Greg O'Donohue of Burbank, California; and the children of Greg Benson of San Diego, California), and she will definitely not be the last without sweeping reforms of Swedish legislation, policy, and attitudes. As discussed below, Congress can do a great deal to reduce the risks for American children and their parents, while increasing the risks of wrongful conduct for governments like Sweden and their citizens.

### 3. These Are Not “Private Child Custody Disputes”

One of the worst aspects of these cases for American parents, as indicated above, is to endure the disinformation campaign conducted by foreign governments and echoed by State Department officers and lawyers up to the Assistant Secretary level that these are “private custody disputes.” Until the Washington Post article mentioned above concerning Lady Meyer appeared in June 1998, it is likely that few Washington decision makers and opinion leaders would have thought possible what Germany has done to the relationship between Catherine Meyer and her children. And that is the key point. It IS Germany (its governmental, legal, and social welfare systems) that has committed these human rights violations, just as it is Sweden that has done everything possible to destroy Amanda's relationship with her American family, friends, home, and familiar environment in Virginia.

In short, these are NOT “private child custody disputes,” as Germany and Sweden try to claim in these cases, and as Executive Branch officials who may wish to write off the children concerned and do business as usual with such countries would like to believe. The following are not “private”: treaty violations, Federal and state felonies, human rights abuses, government payment of legal fees and other financial support, foreign government failure to provide civil or criminal remedies to left-behind American parents, foreign government refusal to respect U.S. laws and court orders.

American parents in such cases are often essentially alone against the power and wealth of the governments concerned. Of course, individual parents capable of internationally abducting or wrongfully retaining children are to be found in every country. The question, therefore, is whether their governments will control their conduct and protect the parental rights of foreign parents, especially in light of the international legal obligations of all countries under either (or both) the Hague Convention and human rights treaties that guarantee the role of both parents and the right of children with parents of different nationalities to spend time in both countries.

The disinformation inherent in the false claim of “private child custody dispute” is particularly infuriating to American parents who have spent much of their savings fighting against the deep pocket of a foreign government in both U.S. and foreign courts simply to maintain contact with their children while obeying all applicable laws in both countries. As indicated above but worth repeating, this “private child custody dispute” red herring (an appropriate description taking into account the conduct of some Scandinavian and Northern

European countries) also attempts to cover up what can only be described as sophisticated and very well-financed governmental child abduction systems, for example, in many European and other countries that may include some or all of the following:

- 1) undeniable bias against foreign parents by the courts (compared to the very high rate of returns of abducted children from the U.S. ordered and enforced by U.S. courts);
- 2) no enforceable visitation or other parental rights for foreign parents (owing to the absence of anything comparable to our contempt of court mechanism)
- 3) no concept of comity (reciprocal enforcement of foreign court orders, including custody orders agreed to by their nationals)
- 4) payment of unlimited legal fees for their nationals who abduct or retain children in all litigation at home and in the U.S. (in both Hague Convention and regular custody proceedings)
- 5) aggressive action by police and prosecutors against foreign parents in enforcing criminal legislation specifically drafted and intended to protect their child abductors/retainers;
- 6) “address protection” programs that enable abductors/retainers and the children involved to disappear even from U.S. consular officers, with the aid of the police and social welfare agencies

Because it has proven nearly impossible for Executive Branch officials and other Americans (especially judges and lawyers) to believe, it must be repeated that, as a practical matter, the exercise of jurisdiction over an abducted or wrongfully retained American child in a regular child custody proceeding by a German or Swedish or Austrian or Danish court (with the inevitable grant of effective sole custody to the non-American abducting parent whether or not it is called “joint” custody) is equivalent to termination of the parental relationship between the child and the American parent. Even if some form of access or visitation is awarded on paper, American parents have no legally enforceable rights of any kind in such countries.

## COUNTRY SUMMARIES

The following is an example of the kind of country-by-country information in narrative form that should have been prepared long ago by the State Department and that should be readily available to Congress, U.S. courts, attorneys, and parents in the annual human rights reports, on the Internet and elsewhere as advisories, in an annual Hague Convention Compliance Report, and otherwise:

### SUMMARY OF THE SWEDISH GOVERNMENT SYSTEM OF INTERNATIONAL ABDUCTION AND WRONGFUL RETENTION OF CHILDREN

In both domestic and international situations, cases of abduction and wrongful retention of children by a Swedish parent are not merely “private custody disputes,” in view of the lack of effective remedies provided by the Swedish legal and social welfare systems to the left-behind parent and the extensive Swedish government financial, law enforcement, social welfare, and other support supplied to Swedish parents who engage in abduction/retention of

children. In international cases where only one parent is Swedish (particularly where the mother is Swedish), children not returned under the Hague Convention on the Civil Aspects of International Child Abduction are, as a practical matter, completely lost to their non-Swedish parents unless the Swedish mother decides otherwise. This is the result of the Swedish legal system's inability to effectively control the conduct of Swedish parents and protect the rights of non-Swedish parents in the absence of any judicial power comparable to contempt of court. In regular child custody proceedings, Swedish courts invariably grant sole custody to Swedish mothers and, as noted, have no power to enforce visitation for non-custodial parents. Although a new Swedish law entered into force on October 1, 1998 permitting Swedish judges for the first time to impose joint custody over the objections of one parent, this law will not be applied with any practical effect when a foreign father is involved. Moreover, the terms of any such joint custody order will be just as unenforceable in Sweden as the visitation provisions of a sole custody order. Similarly, although Swedish legal principles permit sole custody to be shifted from a parent who denies access to a child on the grounds that such a parent is unfit per se, it is highly unlikely in such a case that custody would ever be shifted from a Swedish mother to a non-Swedish father when the consequence would be that the child leaves Sweden to reside elsewhere.

Even in cases where a foreign parent has sole or joint custody under a non-Swedish custody order and no Swedish custody order exists, there is no concept of comity in the Swedish legal system (despite Sweden's obligation under Article 1 of the Hague Convention to ensure respect for the rights of custody and access under the law of other States Parties). Swedish law enforcement authorities, having been informed by the Ministry of Foreign Affairs that foreign custody orders "have no validity in Sweden," aggressively interfere with any effort by a foreign parent to exercise his custody rights in Sweden and may arrest and prosecute him under a unique Swedish penal law that effectively protects and rewards Swedish child abductors/retainers.

In both Hague Convention and regular child custody litigation in Sweden and abroad (including all possible appeals in Sweden, the other country concerned, and the European system), the Swedish social welfare system provides unlimited payment of legal fees for Swedish citizens, thus significantly reducing the incentive for the Swedish child abductor/retainer to compromise or otherwise settle the case. This enables the Swedish citizen to pursue appeals to the highest courts of Sweden and the other country concerned at no expense, while exhausting the financial resources of most non-Swedish parents. In any event, Swedish authorities will not enforce or otherwise respect foreign appellate judgments against Swedish parents.

In non-Hague cases, as demonstrated by the now leading decision of Sweden's supreme court in the Ascough case during 1997 (children of Australian/British father and Swedish mother residing in Singapore), the Swedish courts will take jurisdiction and award sole custody to a Swedish mother even in cases where the children were born outside of Sweden, clearly

reside outside Sweden, have never resided in or even visited Sweden, and were unquestionably abducted to Sweden.

In summary, Sweden's overall legal and social welfare system concerning child custody and parental child abduction/retention does not comply with numerous provisions of human rights treaties to which Sweden is a Party, notably the Convention on the Rights of the Child, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights as a result of six factors:

- 1) the undeniable gender and national bias of Swedish courts, especially in favor of Swedish mothers
- 2) the absence of anything comparable to contempt of court to enforce visitation or other parental rights for fathers (i.e., non-custodial parents)
- 3) the unlimited financial support received in Sweden and abroad by Swedish child abductors
- 4) enforcement by Swedish law enforcement authorities of a criminal law intended to protect and reward Swedish child abductors
- 5) the lack of comity with respect to non-Swedish court orders, and
- 6) the refusal of Sweden to extradite or effectively prosecute Swedish child abductors.

Most notably, Sweden's legal and social welfare systems are inconsistent with both the letter and spirit of Sweden's obligations under the Convention on the Rights of the Child to ensure contact with both parents and, in international cases, with both countries. Thus, Sweden cannot ensure compliance with the provisions of the Convention most relevant to child custody and child abduction/retention: Articles 9, 10, 11, and 18. The United States has signed but not ratified the Convention, but complies with these articles in practice to a far greater extent than Sweden.

## AMANDA'S CASE

Voluminous documentation concerning Amanda's wrongful retention in Sweden by a Swedish diplomat and the Government of Sweden, as well as information on other American children abducted to Sweden, has already been supplied to Committee staff. An updated chronology of the case is attached to this statement, along with:

- the unanimous decision of the Virginia Court of Appeals upholding the Virginia Custody Order
- the Virginia Supreme Court Order dismissing further appeals
- Swedish Government demands for reimbursement of legal fees and child support paid to the abductor
- a Swedish criminal law intended and used to protect Swedish child abductors and punish non-Swedish parents who attempt to exercise their custody rights
- photographs showing Swedish police participation in the continuing Federal and state

felonies against Amanda and me, and

—an outline of the Swedish Government's System of supporting and financing parental child abduction.

With full support in every conceivable way from the Government of Sweden, Amanda has literally been held hostage in Sweden since early 1995, in violation of:

—U.S. civil law and court orders to which the mother agreed in open court

—U.S. Federal and state criminal law

—Sweden's international legal obligations under several treaties (The Hague Convention on the Civil Aspects of International Child Abduction, the Convention on the Rights of the Child, the European Convention on Human Rights, and other human rights instruments)

—Sweden's own civil and criminal laws on joint custody and child abduction (which are never enforced against Swedish mothers), and

—the eligibility requirements for payment of all legal fees in Sweden and abroad by the Swedish Government (which are apparently conveniently waived for Swedish abductors).

The facts of the case are clear. Amanda, a U.S. citizen and resident from birth (November 11, 1987), is also a Swedish citizen. She was a U.S. Government dependent during her first two years while I was posted at the U.S. Mission in Geneva. Mandy then lived with me in Virginia roughly fifty percent of the time until age 6, attending three years of preschool and kindergarten at Browne Academy in Alexandria, Virginia. She spent the rest of her time in New York with her mother, Anne Franzen, who was the lawyer at the Swedish Consulate with lead responsibility for child abduction and custody matters, and who was actually offered the position of Head of the Swedish Central Authority for the Hague Convention upon leaving New York. Despite being wrongfully withheld outside the U.S. for nearly five years now, Amanda has still lived longer in an American diplomatic community or the U.S. itself than in Sweden. She should have been living again in the U.S. since the spring of 1995 under the agreed terms of a December 1993 Virginia custody order and subsequent enforcement orders, which make clear that Amanda's habitual residence continues to be Virginia, that the Virginia courts have continuing exclusive jurisdiction over her case, and that the parents are prohibited from seeking custody modification in any court anywhere in the world without the consent of the Virginia court.

The case against Anne Franzen (Deputy Assistant Under Secretary for Human Rights in the Swedish Foreign Ministry at the time) was so strong that four Swedish courts either ordered Amanda's return under the Hague Convention or held that Sweden did not have jurisdiction over Amanda because she was only in Sweden temporarily in accordance with the Virginia Custody Order to which the mother had agreed. After endless delays, stays of execution, appeals, and litigation financed for the mother by the Swedish Government in 8 separate proceedings in 6 courts (a Hague process that lasted 17 months instead of the 6 weeks set forth in the Convention), the final court from which there was no appeal (the Swedish Supreme Administrative Court or Regeringsrätten) reversed all the lower court rulings in a May 1996 decision that has been declared by the U.S. Government in diplomatic notes to be a violation of the Convention and that has been rejected by the highest courts of Virginia.

On August 9, 1996, with the abducting mother represented by counsel paid by the Swedish Government, the Virginia Court granted me sole and exclusive custody, made contempt findings, and issued several other forms of relief. There was never a Swedish custody order of any kind concerning Amanda until an interim joint custody order was issued by a Swedish court in February 1999. The Virginia Custody Order has withstood costly challenges in the highest courts of Virginia financed by the Swedish Government, and remains the only final order in the world. But Amanda continues to be wrongfully withheld from me, the rest of her American family, her home and familiar environment, and her country by her mother and by the Government of Sweden through a legal and social welfare system that fails to meet even minimal standards of due process of law (e.g., no rules of evidence and no prohibitions on ex parte communications with judges).

Between December 1995 and June 1999, Amanda was able to see me on only five occasions, for a total of 15 hours. On the second occasion (September 16, 1996), after picking Amanda up at her school as a custodial parent unwilling to subject the two of us to the continued degradation of supervised visitation that had unlawfully been imposed for nearly two years at the time, I was wrongfully detained in her presence four hours later at our hotel (where I had informed the mother we would be) by four Swedish policemen at the abducting mother's request. I was held in solitary confinement for nearly 48 hours, despite (or actually because of) the fact that I have sole custody under the only final Custody Order in the case and have joint custody even under Swedish law. Although I was released, never charged with any offense, and compensated by the Swedish Government for wrongful detention, the incident has done incalculable harm to Amanda and to my relationship with her.

On the third and fourth occasions, in December 1996, I was only allowed to see Mandy under police guard at her school, with the police challenging the presence of the Vice Consul from the American Embassy on one occasion and making a further mockery of my joint custody "rights" in Sweden (see attached photographs of Swedish police car at Amanda's school). Amanda and I did not see each other after that demeaning experience in December 1996 until February 1999 when the abducting mother supervised some brief visitation.

Every element of joint custody has been violated: no school or medical records, no photographs, no information on activities or general welfare have been provided to me. There has been no response to any of the countless letters and packages sent to Amanda. For the summers of 1997 and 1998, creative efforts by my Swedish and American attorneys to arrange visitation in the United States with guaranteed returns to Sweden (U.S. court orders ARE enforceable) or any type of supervised or unsupervised access in Sweden were summarily rejected by the mother and her attorney. No assistance was provided by the judge now assigned to the case. The judge who previously dismissed the mother's petition for sole custody and upheld the Virginia Order has, not surprisingly, been removed from the case.

In February, an interim joint custody order was issued over the mother's objection because joint custody is now the norm in Sweden, although it has no practical enforceable meaning in Sweden. The terms of the order gave the mother de facto sole custody, with only supervised visitation in Sweden. Even this meaningless "joint custody" was reversed by the same judge in June 1999 at the mother's request. Several hours per day of supervised visitation took place for a few days in June 1999. The good relationship between Amanda and me has survived despite all efforts by the abductor and the Swedish Government to destroy it, but serious damage has been done to the child (a nervous tick in both eyes). Amanda lived alone with me in Virginia and attended three years of school roughly half the time for nearly 4 years, but everything possible has been done to de-Americanize her and eliminate her relationship with me.

In September 1999, an appeals court reversed part of the June 1999 interim order, restoring joint custody and saying that visitation (still limited to Sweden) does not need to be supervised. Like everything else in the Swedish system, this is not enforceable, and an effort for contact between Amanda and me during the October 8-10 weekend therefore collapsed over the issue of supervision.

#### UNITED STATES GOVERNMENT RESPONSE (OR LACK THEREOF) TO FOREIGN GOVERNMENT SUPPORT OF INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN ABROAD

Today, when an American parent faces the nightmare of international child abduction or wrongful retention abroad, he or she does so alone in most respects. Legal fees and other expenses can quickly mount to tens of thousands of dollars. A decade after U.S. ratification of the Hague Convention on the Civil Aspects of International Child Abduction, there is still no central repository of reliable information and expertise in the Executive Branch that can quickly and effectively supply accurate basic data on the legal system, child custody institutions, law enforcement system, social welfare system, legal aid program, and Hague Convention performance of the abductor's country. The left-behind American parent thus has little basis for evaluating the options available.

Some of the information supplied by the Executive Branch last year to the Senate Foreign Relations Committee in order to obtain the release of 38 law enforcement treaties was inaccurate, incomplete, and misleading, particularly the implication that "everybody does it" and that the United States is no better than most other countries. That implication is false, and the Executive Branch knows it. Moreover, the frequent claim by the Executive Branch that elementary but essential information on a variety of matters concerning foreign legal systems in connection with child abduction or child custody is "not available" to the Executive Branch is untrue. This information is readily available and could be obtained without difficulty or expense from American embassies, experts in the field, local attorneys, and American parents who have learned the hard way. The Executive Branch simply does not want Congress to

have this information because of the likely Congressional reaction.

Although all concerned would presumably agree that prevention and deterrence of child abduction or wrongful retention are the ultimate goals, little is being done in this area. Dissemination of information on the key institutions, laws, and child custody practices of other countries is the key to eliminating much of the secrecy and ignorance that leads to successful child abductions and retentions. Countries whose legal systems and child custody institutions guarantee frequent non-compliance with the Hague Convention or no visitation or other rights for American parents need to be publicly identified and analyzed in depth.

As suggested below, effective vehicles such as the annual human rights reports already exist, and Congress passed legislation last year requiring an annual country-by-country Hague Convention compliance report. As already noted, the State Department submitted a poor report that was inconsistent with both the letter and spirit of P.L. 105-277, but that makes the case for renewed legislation and a permanent reporting requirement. That requirement should be broadened to include cases not resolved within six months, cases involving non-Hague countries, and lists of countries that have any of the 5 Pillars of a governmental child abduction system mentioned above. Maximum use should be made of the Internet and other established channels in the family law and consular affairs fields to ensure that U.S. courts, attorneys, and parents with children at risk are aware of the likely consequences of an abduction to or wrongful retention in a given country.

Left-behind parents often find themselves more knowledgeable in many ways than those in the Executive Branch who are supposed to help them, especially in view of the fact that case officers now are responsible for around 150 cases, according to a recent statement by the Assistant Secretary of State for Consular Affairs. If those who are supposed to help (or their superiors) are primarily interested in maintaining “good relations” with the other countries concerned or declare that they do not work for the American people but rather for the Secretary of State or are fearful that pressing too hard in a current case will jeopardize assistance from a particular country in future cases, the plight of the children involved and their left-behind parents worsens. In the latter case, such a classic policy of appeasement is no more successful in dealing with child abduction than it has historically been in any other field.

At present, there is no real advocate for left-behind American parents, who must deal with a hostile foreign government and an often unresponsive U.S. Government, whereas foreign parents whose children are abducted or retained in the United States have access to the superb capabilities and staff of the National Center for Missing and Exploited Children (NCMEC) because of its role in dealing with “incoming” cases (i.e., abductions to or retentions in the United States). Left-behind American parents would greatly benefit if NCMEC were allowed to play this role for “outgoing” cases instead of “incoming” cases, as suggested above.

There is no monitoring by the Executive Branch of U.S. litigation financed by foreign governments against left-behind American parents (or responsiveness to reports of such litigation), so that U.S. Government statements of interest or amicus curiae briefs can be filed in landmark cases. Instead, the Executive Branch participates in Hague Convention and perhaps other litigation on behalf of foreign parents while failing to help Americans up against the deep pocket of foreign governments trying to reverse or undermine U.S. court orders. Assisting Americans would not require a significant increase in resources. In two recent cases, statements of interest from the U.S. Government of only a page or two would have been invaluable. In my own case, I prevailed in upholding the U.S. custody order in the highest courts of Virginia, but only at a personal cost of more than \$20,000 while the Swedish Government financed this bad faith litigation to exhaust my financial resources while having no intention of respecting any result adverse to the Swedish abductor. In the other case, Mark Larson of Utah lost in the 10th Circuit for acting precisely in accordance with U.S. Government policy and advice in Hague Convention cases. In view of the strong dissenting opinion, literally a few sentences in a U.S. Government statement of interest might have made a difference.

In contrast, foreign Central Authorities often work just as hard to assist their nationals who abduct or wrongfully retain children as they do for their nationals who are victims of these offenses. In the case of the Swedish Central Authority, its support of child abduction and wrongful retention include such means as coordination of litigation strategy in both Sweden and the U.S. against American parents. This has included creative attempts to:

- a) use the Uniform Child Custody Jurisdiction Act in U.S. courts to obtain for Sweden the status of an American state for purposes of jurisdiction and enforcement of Swedish custody orders, and,
- b) use the mere existence of the 1993 International Parental Kidnapping Crime Act in both Swedish and U.S. courts as a justification for not returning children to the U.S. on the pretext that the Swedish abductor might be prosecuted (which adds insult to injury in view of the fact that the Justice Department will only rarely enforce the Act)

Other activities of the Swedish Central Authority have included automatic distribution of Swedish and U.S. Government documents and information to Swedish abductors and their attorneys (while the State Department tells Americans to file Freedom of Information Act requests), informing the Swedish police and prosecutors that American child custody orders have no validity in Sweden in contravention of the whole object and purpose of the Hague Convention set out in Article 1, translation only of court decisions and other documents favorable to the Swedish abductor, and so on. Such conduct by a foreign government, especially its Central Authority for an international convention against child abduction and wrongful retention, should receive the widest possible exposure and censure.

Litigation in the United States financed by foreign governments against Americans who are already the victims of crimes committed by nationals of those governments should at least

raise some serious questions about possible abuse of sovereign immunity. For example, the Swedish Government attempts to put a legal gloss on the abductions and wrongful retentions committed by its citizens by pursuing frivolous appeals of U.S. custody orders all the way to the supreme court of the states concerned even when the children have been held hostage in Sweden for years. Roughly five years ago, Julia Larson was abducted to Sweden from Utah for the third time and my daughter Amanda was wrongfully retained in Sweden. Neither child has been in the United States nor been allowed normal contact with their American families, but the Swedish Government has considered it necessary to try to make everything look “legal” by attacking the Utah and Virginia custody orders in extremely expensive and time-consuming litigation. An effort in Virginia to satisfy a money judgment against the abducting mother by garnishing the retainer paid to her attorney was blocked by an affidavit (attached) declaring that all funds held by the law firm are directly from “the Kingdom of Sweden’s legal aid agency.”

In many respects, an improved United States response requires a change in attitude, so that senior officials acknowledge that foreign legal and social welfare institutions which permit the successful commission of crimes against American children and their parents are not “private child custody disputes” or merely the errors of an “independent judiciary.” Regarding the latter point, it is not clear that the State Department is aware that the judges are not particularly independent in many European countries. They become judges relatively early in their careers, do not have life tenure, and depend on the Ministry of Justice for future assignments. In any event, evidence of foreign government involvement in and support for parental child abduction or retention by their nationals must no longer be ignored by the Executive Branch.

### International Parental Kidnapping Crime Act of 1993

This Act should either be revised (if that will result in greater willingness of U.S. Attorney’s offices to utilize it) or be enforced as it stands when Hague Convention remedies are exhausted or inapplicable, or the left-behind parent so requests. At present, despite the best intentions of Congress, the 1993 Act is not only a failure in helping Americans (there have been few indictments, and fewer still convictions and provisional arrest requests under the Act), but it has become an effective tool for foreign child abductors and retainers. Under some extradition treaties, it actually creates dual criminality where none existed before, so that American parents who rescue their abducted children can be extradited to countries that refuse to extradite their nationals for parental child abduction or any other offense and also refuse to return children consistently (or at all) under the Hague Convention.

Moreover, to add insult to injury for the victims of child abduction or wrongful retention who know that the Department of Justice will generally not implement the 1993 Act, its mere existence (and the purely theoretical possibility of prosecution of foreign abductors or retainers) is being used against American parents in Hague Convention and regular custody litiga-

tion in the U.S. and abroad. Attorneys for child abductors/retainers, including those hired and instructed by foreign governments that are U.S. treaty “partners,” have argued that the fear of prosecution under the 1993 Act justifies the denial of applications for return of children under the Hague Convention, as well as refusal of abductors/retainers to appear in U.S. custody proceedings. This latter argument concludes with a demand that U.S. courts defer to the jurisdiction of the foreign court.

That was precisely the argument made in Virginia to the trial court and the Court of Appeals in my daughter’s case by the attorney hired by the Swedish Government. Fortunately, the Virginia judge cut through the argument by asking whether the abductor would immediately return to Virginia with the child if given immunity from prosecution. This bad faith argument fared no better in the Court of Appeals. But the argument that the children should not be sent back to the U.S. under the Hague Convention if the local parent faces criminal charges will almost certainly succeed in many foreign courts.

With regard to implementation of the 1993 Act, the approach being taken by some U.S. Attorney’s offices concerning the Act cannot possibly be consistent with the intent of Congress. Although the Act places both wrongful removal (or abduction) of a child from the United States and wrongful retention abroad on the same level, as does the Hague Convention, wrongful retention abroad is effectively being read out of the Act by some prosecutors as not serious enough to merit indictment.

Moreover, some prosecutors have unilaterally added as an affirmative defense that a child abductor or retainer is attempting to obtain a local custody order abroad and would already have succeeded so but for Hague Convention proceedings freezing the local custody process. In like manner, some prosecutors are incorrectly asserting that a foreign court order denying return of the child(ren) under the Hague Convention constitutes a defense under the Act. Disregarding the entire object and purpose of the Hague Convention in Article 1 (respect for the custody laws of other Parties to the Convention), such prosecutors apparently have no difficulty with individuals who clearly violate U.S. court orders and custody rights, as long as they are also attempting to persuade a foreign court to ignore the orders and unilaterally take jurisdiction over the case. In essence, this approach gives immunity from prosecution, so long as abductors are using the legal process in their home country, no matter how corrupt, incompetent, or biased against foreign parents it may be.

Even when Hague Convention remedies are inapplicable or have been exhausted, and thus utilization of law enforcement mechanisms will not jeopardize return of the child(ren), left-behind parents hear a litany of excuses for failure to implement the Act or to use it in any way to pressure abductors into returning the child(ren). The latter approach does not constitute misuse of the criminal process to achieve a civil law objective, as some might argue. Rather, it would constitute use of a criminal law to bring a halt to criminal conduct, which is presumably what Congress intended. At the moment, the point is moot because the 1993 Act

is being used far more by foreign governments against Americans than by the U.S. Department of Justice.

In litigation financed by foreign governments, as noted above, its mere existence is cited as a reason not to return children to the United States in European courts and as a reason to defer to European jurisdiction in U.S. courts. Adding to the irony of the general refusal by U.S. law enforcement authorities to implement the 1993 Act is the very aggressive enforcement by some European law enforcement authorities of laws or policies that protect local child abductors and target foreign parents who attempt to exercise their sole or joint custody rights. An example of such a criminal law from the Swedish penal code is attached to this statement. It has been used as a justification for aggressive Swedish police action against several American fathers, including me, as described above.

Ironically, the record of U.S. courts under the Hague Convention in recent years is nearly perfect concerning returns of children to some of the worst violators of the Convention, including Sweden. There have in fact been essentially voluntary returns of children to the United States from such countries. But a determined Swedish or Danish or Austrian or German child abductor/retainer (among others) will almost never have to comply with return orders from their own courts. There is nothing comparable to contempt of court with jail time attached, so there are no truly effective means of enforcing civil court orders in European civil law countries, including Hague Convention return orders. Police assistance to enable an American or other non-local parent to take a child out of the country is virtually impossible. Moreover, European abductors/retainers have the possibility of further delaying and frustrating the Hague Convention process by utilizing the European Human Rights Commission and Court in Strasbourg.

Especially in Scandinavia, mothers also increasingly have the option of going “underground” or otherwise stalling long enough to have the case reopened, with the best interests of the child(ren) then being found to require remaining in place because they are fully resettled. Of course, in social welfare States where the governments continue to pay legal fees, child maintenance, and other allowances to child abductors, the authorities can easily find those who go “underground” if they want to.

While a few countries that provide legal aid to both parties in Hague cases without regard to need (e.g., the United Kingdom) may have a valid complaint about the failure of the United States to provide legal aid to anyone, the situation is far worse where a government pays unlimited legal fees at home and abroad for its child abductors, so that left-behind American parents are confronted by the deep pocket of a foreign government not only in foreign courts but also in U.S. courts. The point is that foreign parents are not in any way up against the U.S. Government in abduction cases here.

Several additional preventive and remedial actions by Congress are needed to “level the play-

ing field” for American parents facing off against foreign governments. Congress is confronted daily with many competing demands that have serious resource implications. This request does not. It seeks only the requisite political will to accomplish the objectives of better protecting American children from international parental kidnapping, especially when such conduct is directly supported by foreign governments.

Taking into account that the high rate of return from a very few countries (e.g., the United Kingdom) makes even the overall return average of thirty percent misleading, the Hague Convention success rate with certain countries is so low that the reality facing many American parents is a stark choice between abandoning their children or conducting a rescue operation. That reality and the country-by-country details behind it need to be comprehensively disseminated to all U.S. courts, family law practitioners, law enforcement authorities, and the general public.

## PROPOSED CONGRESSIONAL ACTIONS AGAINST INTERNATIONAL CHILD ABDUCTION

Congress may wish to give serious consideration to specific proposed actions listed below in order to accomplish three general objectives:

1) Dissemination of sufficient information to alert U.S. courts, law enforcement authorities, family law practitioners, and parents in bi-national situations concerning the difficulties of gaining the return of American children from particular countries;

2) The sending of a clear worldwide message that the U.S. Government will no longer tolerate the abduction or wrongful retention of American children under any circumstances -31-

and will make foreign governments pay a price if they essentially encourage and reward such conduct through financial and other direct support to abductors; and,

3) Reform of current U.S. law and practice (both civil and criminal) that can work against American citizens, thus aiding and abetting the abduction of American children by foreign citizens and their governments.

In view of the overall poor performance of the State and Justice Departments for many years, receivership is necessary. Accordingly, the following proposals do not constitute micro-management.

### 1) U.S. CENTRAL AUTHORITY

PROPOSALS: A) Amend ICARA if necessary or otherwise direct that the U.S. Central Authority for the Hague Convention be shifted immediately from the State Department to the

Civil Division of the Justice Department (with the State Department directed to provide all support and assistance requested), taking into account the need to improve such areas as:

- training and expertise of personnel
- continuity and institutional memory of personnel
- number of personnel available
- caseload of personnel
- quality, quantity, and nature of legal support available
- the balance between child abduction/retention cases and “good relations” in bilateral relations
- the role of regional bureaus and American embassies
- general openness and a willingness to provide left-behind American parents with all available information and documentation

B) Direct that NCMEC cease handling incoming cases and play the same role for “outgoing” cases (i.e., abductions from the U.S. and retentions of American children abroad) that it has been playing for “incoming” cases, with a mandate for assertive advocacy on behalf of American parents on all fronts

## 2) HUMAN RIGHTS AND PREVENTION, PUBLICITY, AND ACCOUNTABILITY

PROPOSALS: A) Human Rights: In the “children’s rights” section of the annual human rights report on each country, direct that the child custody system be summarized, including gender bias or bias against foreigners based on statistical evidence, enforceability of visitation/access for noncustodial parents (i.e., is there anything comparable to contempt of court?), payment of legal fees for host country nationals in custody or abduction cases, criminal legislation that protects abductors/withholders, compliance (or not) with the relevant provisions in the Convention on the Rights of Child on the role of both parents, the right of children in international cases to spend time in both countries, etc. The U.S. is not a Party but has signed and complies with the relevant provisions to a far greater extent than most States Parties.

—Each year, the annual human rights report is eagerly awaited, widely disseminated, and, unlike most government reports, widely read throughout the world. One important function that the annual human rights reports should perform is prevention, as “human rights advisories” comparable to travel advisories; i.e., to alert potential victims of current and/or ongoing, systemic human rights abuses. If just one child from ANY country is saved from being lost because a judge, attorney, parent, or family friend reads or hears about government-supported child abduction/retention in a given country, then an accurate and complete report will have accomplished something both worthwhile and right. An accurate and complete report on countries such as Sweden would constitute a great service to American and other parents who might be warned in time to avoid losing their children.

—This subject belongs in the Human Rights Reports on its merits based on the numerous

provisions in international human rights instruments that are violated by foreign governments in these cases. The First Lady has been right morally and legally in repeatedly declaring that international child abduction and retention are a human rights matter. State Department opposition is ludicrous, especially in view of what IS covered in the reports already and the fact that this is a systematic human rights abuse against Americans, whereas the current reports are devoted almost exclusively to what foreign governments do to their citizens.

B) Enact a permanent annual reporting requirement on Hague Convention Compliance to cover retention cases and any case where the child is not returned to the United States not resolved within 6 months, and to include lists of countries that do not have anything comparable to contempt of court and cannot enforce their own civil court orders, that pay the legal fees of their abductors/retainers, that have criminal legislation which effectively protects their abductors/retainers, etc.

### 3) BILATERAL RELATIONSHIPS

PROPOSAL: Review what type of relationship the United States should have with governments that engage in the following conduct and attach consequences such as no new law enforcement treaties or child support enforcement agreements if they:

- are directly engaged in facilitating, financing, otherwise supporting, and rewarding criminal conduct against American citizens
- have in place any elements of a governmental child abduction system
- have refused return of American children abducted/retained in violation of U.S. law or court orders
- have unresolved cases of abduction/retention of American children with no meaningful or enforceable access for the American parent
- use their law enforcement authorities aggressively against American parents whose children have been abducted/retained and rarely if ever use them to assist American parents
- have failed to compensate American parents of abducted/retained children for their legal and other expenses
- abuse their sovereign immunity by financing litigation in U.S. courts against American parents while claiming that the cases are private custody disputes and refusing to respect/enforce results adverse to their citizens

### 4) EXTRADITION

PROPOSAL: Direct that the United States inform all extradition treaty partners that the U.S. will not extradite its nationals for the offense of parental child abduction or related offenses to any country that will not extradite or effectively prosecute its nationals and will not fully comply with its obligations under the Hague Convention.

## 5) MUTUAL LEGAL ASSISTANCE TREATIES (MLATs)

PROPOSALS: A) Consider whether the United States should provide assistance against a left-behind American parent in any case where there has been a child abduction/retention in violation of U.S. law or court orders AND whether the United States should provide assistance under any foreign law that criminalizes the attempts of custodial parents (sole or joint) to exercise their parental rights in response to abduction/retention of their child(ren). (e.g., See attached Swedish penal law that has been used against several American parents of abducted/retained children)

B) Refuse to sign or ratify an MLAT with any country that consistently supports international child abduction such as Sweden, in view of participation by Swedish police and prosecutors in the commission of Federal and state felonies against American citizens, Sweden's blatant and continuing violations of its obligations under related treaties, the unacceptable elements of Sweden's legal and social welfare system (summarized above), and the current and past cases of criminal conduct and human rights violations against American children and their parents directly facilitated, financed, rewarded, and supported in every conceivable way by the Government of Sweden.

C) Deliver a message comparable to the following one that should be delivered to Sweden to any country that engages in similar conduct; i.e., that no further consideration will be given to moving forward on a mutual legal assistance treaty (MLAT) until the Government of Sweden:

- terminates its comprehensive participation in ongoing Federal and state crimes against American citizens, in particular the International Parental Kidnapping Act of 1993 (18 USC 1204) and the comparable laws of each state
- acknowledges that American children over whom Swedish courts exercise custody jurisdiction are completely lost to their American parents unless the Swedish parent decides otherwise, and takes effective remedial actions
- eliminates the Swedish Government Child Abduction System (see above), starting with acknowledgment and elimination of the 5 pillars of the System (no principle of international comity in the Swedish legal system, undeniable bias by Swedish courts against non-Swedish fathers in regular custody proceedings and guaranteed sole custody awards for Swedish child abductors, nothing comparable to contempt of court to enforce access/visitation, unlimited government financing of legal fees and other expenses of Swedish abductors, and aggressive Swedish law enforcement use of a criminal statute that targets non-Swedish fathers)
- resolves satisfactorily all pending cases of child abduction/retention by Swedish citizens through return of the children to the United States and putting in place immediately enforceable criminal remedies against the Swedish citizens involved to prevent any recurrences
- implements and demonstrates the effectiveness of reforms of its legal and social welfare system to deter or quickly resolve in an acceptable manner all future cases, including in particular unsupervised and immediately enforceable access to the children concerned guaran-

ted by something comparable to criminal contempt, termination of legal aid for child abductors in civil proceedings, and streamlining its legal system to prevent endless appeals and delays

—repeals its criminal law directed against non-Swedish fathers attempting to exercise sole or joint custody rights over children abducted or withheld by Swedish mothers

—directs its police and prosecutors to cease harrasing and attempting to intimidate American and other parents of abducted/retained children who attempt to exercise their custody rights

—compensates American parents of abducted/retained children for all expenses of litigation financed by the Swedish Government in both Sweden and the U.S., as well as all other costs and damages resulting from Sweden's failure to comply with its treaty obligations under the Hague Convention on the Civil Aspects of International Child Abduction and the family/parent provisions of the Convention on the Rights of the Child —halts its abuse of sovereign immunity in aggressively litigating against American parents in U.S. courts with no intention of respecting or enforcing results adverse to the Swedish citizen

—demonstrates that it will extradite or effectively prosecute Swedish parents who engage in child abduction/retention

## 6) CHILD SUPPORT ENFORCEMENT

PROPOSAL: Terminate the State Department authority in P.L. 104-193 (Section 459A) or at least amend it to:

a) prohibit any child support enforcement arrangement with a country that does not have a legal system providing prompt, adequate and effective enforceable, unsupervised access/visitation IN THE UNITED STATES by means of something comparable to contempt of court

b) prohibit any child support enforcement arrangement unless it contains ironclad guarantees that no American parent of an abducted/retained child will be affected, harassed, or penalized in any way AND it expressly excludes any case where there is or has been at any time:

—a violation of a U.S. custody order or U.S. custody law

—a violation of a Federal or state criminal law

—a denial of a request for return of the child(ren) under the Hague Convention or a failure of the foreign Central Authority to comply with other Convention obligations

—termination or reduction of any support obligation by a U.S. court

—an unpaid judgment or fine imposed by a U.S. court on the foreign parent

—a failure by the foreign government or its courts to provide rapidly enforceable, unsupervised, and generous visitation in the United States with police assistance and with no legal aid provided to the foreign parent violating a foreign or U.S. custody order

—an inability or refusal by the foreign government/courts to control the conduct of the for-

eign parent through contempt of court or other effective means  
—an inability or refusal by the foreign government/courts to protect and promote the exercise of parental rights by the American parent

## 7) IMPLEMENTATION OF THE INTERNATIONAL PARENTAL KIDNAPPING ACT OF 1993, 18 US 1204

PROPOSAL: Either mandate Justice Department enforcement of the Act or repeal it, in view of the foreign government efforts to use the Act against Americans noted above. At present, the law is primarily used against Americans and rarely enforced by the Justice Department.  
—If not repealed, require an annual DOJ report on the number of requests from parents or their counsel for indictments, number of indictments, number of extradition requests, number of actual prosecutions, etc.

## 8) PRIVACY ACT

PROPOSAL: Require that left-behind parents be provided with the option (in writing) to waive all Privacy Act rights so that their names can be given to parents involved with the same country and to organizations (such as NCMEC) that can help.  
—Prohibit use of the Act to withhold any information or documents from left-behind American parents  
—Prohibit use of the Act on behalf of abducted American children or abductors (even if U.S. citizens) as a basis for withholding information or documents from left-behind American parents

## 9) FREEDOM OF INFORMATION ACT (FOIA)

PROPOSAL: Prohibit use of FOIA as a basis for refusing release of ANYTHING and EVERYTHING to American parents in child abduction/retention cases (information, documents, diplomatic and other government-to-government correspondence, etc.)  
—these are not matters of national security; a left-behind American parent has an absolute right to know everything that his government has done or failed to do to obtain the return of the American children concerned

## 10) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITIES ACT

PROPOSAL: Create an exception to the FSIA giving American citizens a cause of action in U.S. district courts against foreign governments (and all their assets in the United States) that directly engage in, facilitate, or otherwise support criminal conduct against them and their children

## 11) BILATERAL CLAIMS

**PROPOSAL:** Consider the use of bilateral U.S. Government claims on behalf of American children and their parents against foreign governments that have permitted their nationals to abduct/retain American children (and perhaps provided assistance and support)

## 12) OFFICE OF FOREIGN MISSIONS

**PROPOSAL:** Require OFM to: A) regulate and monitor the hiring and payment by foreign governments of American attorneys in cases of abduction/retention of American children where U.S. civil/criminal law or U.S. court orders have been violated, and B) monitor and discourage any harassment of American citizens by foreign government agencies demanding either “child support” for abducted/retained American children or reimbursement to the foreign government of the legal fees it has paid for someone who has abducted or retained American children

## 13) INTERPRETATION OF THE HAGUE CONVENTION

**PROPOSAL:** Direct that the Executive Branch inform all U.S. courts and Hague Convention countries that the term “grave risk” in Article 13 of the Convention (as a grounds for not returning a child) should be interpreted to include situations where the country concerned cannot provide enforceable access or visitation owing to the absence of anything comparable to contempt of court in its legal system.

**SPECIFIC PROPOSALS (FOR BOTH THE UNITED STATES GOVERNMENTS AND OTHERS) TO IMPROVE IMPLEMENTATION OF THE HAGUE CONVENTION AND TO COMBAT INTERNATIONAL CHILD ABDUCTION AND WRONGFUL RETENTION: ACCOUNTABILITY, PREVENTION, IMPLEMENTATION OF INTERNATIONAL TREATIES, REMEDIAL ACTIONS**

### 1) ACCOUNTABILITY

At present, there is no meaningful accountability for any of the entities or officials with the responsibility of dealing with abduction/retention (i.e., governments, Hague Convention central authorities, foreign ministries, justice ministries, police, prosecutors, etc.). A goal for the United States should be to create such accountability, primarily through publicity and dissemination of information in all possible ways, both on a case-by-case basis and for countries whose overall legal and other institutions provide a system that supports abduction/retention in any way.

### 2) PREVENTION (through definitive and reliable sources of information to ensure that parents, judges, attorneys, and law enforcement authorities know the odds of children returning from each country in the world)

A) Continuous Dissemination of Information by means of a Web Site and an annual published Report (like Amnesty International's annual country reports) under U.S. Government, NCMEC, or other auspices, with a database containing OBJECTIVE and FACTUAL information on each country's:

- legal system (comity for foreign custody orders or laws? enforceable visitation or other civil court orders? criminal laws that protect abductors/retainers?)
- social welfare system (payment of legal fees for abductors/retainers? payment of child support to abductors/retainers? government-paid psychiatrists/psychologists available to support abductors/retainers?)
- child custody practices (statistics showing results of custody proceedings by gender and nationality)
- Hague Convention performance (average duration of proceedings? actual return rate? access issues?)

Explanation: A major purpose of such a web site is to enable judges from South Africa to Idaho to Singapore to have instant access to definitive information that tells them whether children in either a Hague or regular custody case will return (if one parent resides locally) and/or have access in any way to both parents if allowed to leave the jurisdiction (e.g., all judges and governments should know that children that end up in most European civil law countries are completely lost to parents from other countries UNLESS the local PARENT decides otherwise). A further purpose is to identify countries with legal and social welfare systems that are so clearly INCOMPATIBLE with Hague Convention and Rights of the Child Convention obligations (Articles 9, 10, 11, 18, and others) as to guarantee successful child abduction/retention by their citizens. NCMEC and the Task Force must have the courage to identify publicly through all available media the countries that are the worst offenders, both in specific cases AND in the availability of their legal and social welfare systems to encourage, facilitate, finance, and otherwise support child abduction/retention by their citizens or residents

B) The U.S. Government Hague Convention Compliance Report (mandated by legislation passed in October 1998)

This Report should be made a permanent annual reporting requirement for the Department of State, should be viewed as an international resource (like the web site described above and the current U.S. annual human rights reports), and should be broadened to include all children not returned within 6 months, objective information on each country's legal and social welfare systems, and non-Hague cases and countries. NCMEC and all other interested parties should closely review these reports and be a "truth squad" (i.e., a sort of "State Department Watch") to ensure accurate and complete reporting by the Department of State whether or not there is outside pressure from Congress, the media, and the public.

### C) The Annual Country Reports on Human Rights

These reports prepared by the Department of State and issued by Congress are now an international resource for all governments, academia, and private individuals and organizations. However, despite a section on “children’s rights” in each country report, these reports are now silent on the human rights violations inherent in international child abduction and retention facilitated, financed, otherwise supported, and rewarded by governments. Every country in the world is a Party or signatory to the Convention on the Rights of the Child, and some of the worst offenders in this area are also Parties to the Hague Convention and the European Convention on Human Rights.

Congress should direct the State Department to address governmental conduct relating to child abduction and retention in the human rights reports and acknowledge that the Hague Convention IS a human rights treaty, particularly since the status quo aids and abets the conduct of the governments, especially in Europe, that maintain child abduction/retention constitute merely “private custody disputes”

### D) UN Committee on the Rights of the Child

The State Department and NCMEC should submit country reports (and complaints about legal or social welfare systems that virtually invite child abduction and retention) to this implementation body for the Convention on the Rights of the Child to create demands for changes in laws, policies, and practices

## 3) IMPROVED IMPLEMENTATION OF THE HAGUE CONVENTION

A) Abuse of Article 13: The U.S. Government and NCMEC should compile and publicize the increasingly creative abuses of Article 13b (grave risk to the child as a grounds for denying return applications)

B) Psychological effect of abduction/retention on victims: The U.S. Government and NCMEC should publicize both the Stockholm Syndrome and the Parental Alienation Syndrome

C) Access/custody during the Hague process: The U.S. Government and NCMEC should publicize the virtually complete failure of the Convention’s access provisions and the practices of many countries that allow abductors/retainers to control access to the child(ren) during the Hague process, especially when return orders are stayed pending appeals by abductors/retainers (i.e., courts should shift temporary custody to the left-behind parent or at least enforce substantial access)

D) Training of judges: The U.S. Government and NCMEC should identify and publicize the Hague Parties that fall short in this area and disseminate a model training package (perhaps

based on the U.S. and British packages)

E) “Two track” court systems: The U.S. Government and NCMEC should declare the incompatibility with Hague Convention obligations of legal systems that use a separate administrative court system for Hague cases while handling custody cases in regular courts that may proceed with jurisdictional and other disputes while a Hague application is still pending

F) Performance of Central Authorities: The U.S. Government and NCMEC should evaluate central authorities and publicize cases where a central authority does far more for its citizens who abduct/retain children than some central authorities do for their citizens who are victims (e.g., Sweden compared to the U.S.)

G) Length of process: The U.S. Government and NCMEC should gather and disseminate data on average duration of the Hague process in each country (bearing in mind that returns after a lengthy process are better than quick final denials!)

H) Enforcement: The U.S. Government and NCMEC should shine the spotlight on all countries with legal systems that do not permit effective enforcement of Hague return orders, access, visitation, etc.

I) Limit appeals: The U.S. Government and NCMEC should publicize legal systems that allow essentially allow appeals and/or the reopening of Hague return decisions until their citizens win

J) Meaning of Article 1: The U.S. Government and NCMEC should publicize the extent to which Article 1 of the Convention is meaningless (i.e., that the object and purpose of the Convention is to ensure that Parties respect the laws of other Parties concerning child custody and access)

K) Legal Aid: The U.S. Government and NCMEC should publicize the extent of legal aid provided by each country, ESPECIALLY situations where governments finance their nationals who engage in abduction/retention while their victims are up against that government’s deep pocket in litigation in both countries

L) Nullification by European system: The U.S. Government and NCMEC should publicize the fact that abductor/retainers from ALL European countries may be able to nullify even Hague return orders from the highest courts of their countries by utilizing the European human rights commission/court in Strasbourg

M) Entitlement of left-behind parents to information: The U.S. Government and NCMEC and the Task Force should press all governments to provide all information and documents in every case to left-behind parents, including diplomatic notes

#### 4) REMEDIAL ACTIONS

The U.S. Government and NCMEC should utilize all means on all fronts to produce:

A) Access/visitation regimes in both Hague and regular custody cases with effective sanctions and police assistance to deal with parents who do not cooperate

B) Widespread Ratification of the 1996 Hague “Protection” Convention WITH EFFECTIVE IMPLEMENTING LEGISLATION to avoid the current situation with both the Hague Convention and the Rights of the Child Convention (i.e., widespread ratification with no underlying implementing legislation by some of the most self-righteous and worst offending Parties, such as Sweden, Germany, Austria)

C) Linkage to law enforcement treaties and child support agreements to prevent the worst offending countries from additional one-way benefits comparable to those they now enjoy under the Hague Convention

D) Bilateral Agreements on custody and visitation with the worst offenders, as contemplated in Article 11(2) of the Convention on the Rights of the Child

E) No closing of cases and “writing off” of American children that other governments refuse to return

F) Inclusion of child abduction/retention as a major issue in bilateral relations

G) Extradition by all countries of their citizens for child abduction/retention

H) Elimination of government financial support for abductors/retainers in the forms of unlimited legal fees at home and abroad, abusive and frivolous litigation in the left-behind parent’s country, assistance to abductors/retainers from criminal legislation (and police and prosecutors), payment of child support to abductors/retainers, availability of government psychiatrists or psychologists to assist with bogus Article 13 defenses, etc.

I) Ability of left-behind parents to penetrate sovereign immunity and bring lawsuits in the courts of their country for damages against governments that facilitate, finance, or otherwise support criminal conduct against them (i.e., abduction/retention of their children)

J) Bilateral claims against governments that facilitate, finance, or otherwise support abduction/retention by their citizens or residents

Mr. Chairman, in an era of budget constraints, it is reasonable for Congress and the American people to ask what U.S. Government interest is more important than protecting our youngest citizens from the impact of crime. And international parental child abduction or wrongful retention of children are crimes, as well as human rights violations. The Hague Convention is

a noble effort to remedy criminal conduct by civil means, but all too many countries (notably European civil law countries) knew at the time they ratified the Convention that their basic child custody laws and institutions were (and still are) incompatible with full compliance.

All of us are well aware that there are many ways to lose a child, none of them acceptable. But foreign government support for and participation in the loss of a child is intolerable. To a large extent, these crimes and human rights violations against American children and their parents succeed because the foreign governments concerned are confident that there is simply no downside risk; i.e., no real-world consequences for ignoring or dismissing the U.S. Government's interests and views. This guarantees future cases. As a father who came within 18 hours of regaining his daughter only to have a last-minute stay from a Swedish court change our lives forever, I can only express the hope that this Committee and Congress in general will ensure that there will be consequences in the future for governments that facilitate, finance, otherwise support, and reward the international parental child abduction and wrongful retention abroad of American children.

#### LATEST EXAMPLE OF FOUR YEARS OF EFFORTS (NO RESPONSE)

907 Dalebrook Drive

Alexandria, Virginia 22308 11 January 1999

The Honorable Harold H. Koh  
Assistant Secretary of State  
For Democracy, Human Rights, and Labor  
U.S. Department of State (DRL)  
Room 7802  
Washington, DC 20520

Re: Sweden—Annual Human Rights Report

Dear Mr. Koh:

Although I am one of your attorneys in L/HRR, this letter and its enclosures are, of course, submitted to you solely in my private and personal capacity to avoid any appearance of conflict of interest. The dual purpose of this letter and its enclosures is to supply you with the record of my thus far unsuccessful efforts since 1995 to persuade DRL and Embassy Stockholm to produce an accurate and complete human rights report on Sweden with respect to children's rights and to urge you to remedy the situation in the 1998 report. This can easily be accomplished by adding a more concise version of the first enclosure to the section on children in the Swedish report. There is ample time to accomplish this before publication of the 1998 report.

While we are rightly concerned with human rights violations by foreign governments against

their own citizens, we should be far more concerned with human rights violations by foreign governments against American citizens, especially when such violations are made a certainty by the overall systems and institutions of the countries in question. I believe Congress, the media, and the American people will agree. Until the annual report on Sweden contains the substance of the first two enclosures (Summary of the Swedish Government System of International Abduction and Wrongful Retention of Children and my recent Submission to the UN Committee on the Rights of the Child), your office will be doing a terrible disservice to all American and other children at risk from the Swedish system and to the cause of human rights generally. Governments and individuals now rely on the annual reports in a variety of ways. Elimination of the section on children from the Swedish report altogether would be a far more honest and honorable approach than continuing to supply misleading and arguably fraudulent reports to Congress, the American people, and the international community. DRL should either do it right, or not do it at all.

You will note from the enclosed package of correspondence with DRL and Embassy Stockholm that my most recent communication with DRL was at the Principal Deputy

Assistant Secretary level concerning the 1997 report on Sweden. In recent years, the section on children in the Swedish report concentrates on such topics as education and medical care while whitewashing the fundamental human rights violations committed by the Swedish Government and giving the false impression that there are no significant risks to children in Sweden. In fact, the Swedish legal and social welfare systems ensure that American (and other non-Swedish or dual national) children abducted to, wrongfully retained in, or otherwise taken to Sweden will completely lose their American or other non-Swedish parent, family, and home, unless the Swedish parent decides otherwise. As described in the enclosures, that is because the Swedish Government (its policies, practices, and legal and social welfare systems) facilitate, finance, otherwise support, and reward the total elimination of one parent and family from a child's life in both abduction/retention and regular custody cases. There are those in the Department of State who attempt to argue that none of this entails human rights violations. Such people do not have the competence, expertise, or sensitivity to be entrusted with human rights work of any kind.

My recent submission to the Committee on the Rights of the Child (the second enclosure) explains how Sweden's conduct in this area constitutes clear, consistent, and institutionalized violations of ten articles of the Convention on the Rights of the Child (2, 5, 8, 9, 10, 11, 16, 18, 29, and 35). Having signed the Convention, the United States at least has the obligation to do nothing contrary to its object and purpose. The 1997 report on Sweden contains the preposterous statement that an "ombudsman also ensures that Sweden lives up to its obligations under the United Nations Convention on the Rights of the Child." If DRL and Embassy Stockholm would do some independent research instead of recycling old reports and blindly accepting whatever the host government tells them, they would know that Sweden has not adopted adequate implementing legislation and that Sweden therefore cannot comply with

most of the provisions listed, even if individual judges or other officials would like to do so.

How many of the people involved with the report on Sweden in DRL or Embassy Stockholm fully comprehend that Swedish judges have nothing remotely comparable to a contempt of court power to enforce their own orders in child abduction or regular child custody cases (e.g., for return or visitation)? In any event, it is inconsistent with the obligations of the United States as a Convention signatory to participate in such a cover-up of Convention violations and to disseminate globally such Swedish Government disinformation. In view of the unlimited Swedish Government financial and other resources arrayed against American citizens (see enclosures) who receive virtually nothing from the U.S. Government, it is not asking too much for DRL to include a few paragraphs in a 1600 page report printed on tissue paper.

In the third enclosure (my testimony before the Senate Foreign Relations Committee on October 1, 1998—again in my private capacity), I mention the more general problem. Among other things, the reports on Sweden and some other European countries constitute a double standard “pass” for our fellow developed Western countries, while we impose higher standards on developing countries. In fact, a country like Sweden, with all its rhetoric on human rights in general and children’s rights in particular, and its self-appointed status as the “conscience of mankind” and leading defender of children, should be held to the highest possible standards. The current human rights reports not only fail to do so, but badly deceive readers in the process and may in fact help produce human rights violations if American judges, law enforcement personnel, or other officials rely on them in actual cases. U.S. legislation virtually encourages American courts to treat foreign countries like American states in terms of deferring to foreign custody jurisdiction, unless the foreign government concerned violates human rights or otherwise does not meet U.S. standards. Since foreign custody jurisdiction generally means elimination of the American parent from the child’s life, DRL has a duty to supply American courts with accurate and complete human rights reports that will serve as a basis for rightly refusing to defer to foreign child custody jurisdiction in many cases. In the current reports, the cover-up of foreign human rights violations in this area may result in terribly unjust decisions by American courts that rely on them for completeness and accuracy.

Sweden loudly boasts of being the first country to ratify the Convention on the Rights of the Child and leads the criticism of the United States for its failure to ratify. Although not a Party, the United States complies with the provisions of the Convention in question to a far greater extent than Sweden, and we should not hesitate to state that publicly. As with several other treaties (e.g., the European Convention on Human Rights, the Hague Convention on the Civil Aspects of International Child Abduction, the ICCPR), Sweden confuses the photo opportunity of ratification with the daily requirement of implementation, and the United States allows Sweden to get away with it by issuing inaccurate, incomplete, misleading, and fraudulent human rights reports.

As you must certainly know, your appointment gave hope on a wide variety of matters to countless people inside and outside the Department. I was one of them. I hope you will act immediately on the 1998 report on Sweden. After four years of DRL and Embassy Stockholm stonewalling, however, I hope you understand the necessity for me to pursue this matter simultaneously with the Inspector General and the relevant committees of Congress.

Thank you for your consideration of this matter. I look forward to hearing from you.  
Sincerely,

Thomas A. Johnson  
(703) 799-5899 (Phone and Fax)  
907 Dalebrook Drive  
Alexandria, Virginia 22308  
USA  
5 January 1999

Ms. Sandra Mason, Chair  
United Nations Committee  
on the Rights of the Child  
UN Center for Human Rights  
Palais des Nations  
1211 Geneva 10, Switzerland

Re: Sweden

Dear Ms. Mason:

As a result of not knowing the Committee's precise schedule until recently, I greatly regret that this communication concerning the Government of Sweden's failure to adopt measures (including implementing legislation) to give effect to several of the most fundamental rights set forth in the Convention on the Rights of the Child, Sweden's lack of progress made on the enjoyment of those rights, and its consistent, systematic, and institutionalized violations of many of these rights, is being submitted at a relatively late stage of the Committee's consideration of Sweden's report.

However, despite its international legal obligations under the Convention, Sweden's harmful conduct toward children with respect to family law matters, international child abduction, and wrongful retention of children is beyond question and based on clear evidence. It cannot be denied by the Government of Sweden, and will be apparent to Members of the Committee based on this communication and other available information. From the article-by-article analysis below, Members will note the provisions of the Convention that Sweden has failed to implement, and/or violates, in this area (notably Articles 2, 5, 8, 9, 10, 11, 16, 18, 29, and

35). In view of these points, combined with the devastating impact on children of the present Swedish system (i.e., the nearly certain loss of one parent in custody and abduction/retention cases), the Committee's limited opportunity to address Sweden's conduct again for five years, the leadership role that Sweden has unilaterally claimed in the field of children's rights, and the complete lack of effective and legally enforceable remedies under the current Swedish system (starting with the inability of Swedish courts to enforce their own civil orders), it is hoped that the Committee will give full consideration to this communication and will vigorously press the Government of Sweden to adopt the necessary reforms and remedial actions. This is NOT an individual or group complaint against Sweden. I am well aware that the Convention does not provide such a mechanism and that the Committee on the Rights of the Child does not have procedures for handling such complaints.

Rather, as indicated above, the purpose of this communication is to inform the Committee of the inadequacy of the Swedish Government's implementation of the Convention, and the manner in which the rights of children under the Convention articles listed above are violated on a daily basis by Sweden's overall legal and social welfare system in both domestic and international cases.

Specifically, as discussed also in the attached summary and outline of the Swedish Government System of International Child Abduction and Wrongful Retention of Children (much of which also applies to Sweden's treatment of children in regular custody cases), the Government of Sweden facilitates, finances, and otherwise supports such violations by means of a legal and social welfare system that, as a practical matter, encourages and rewards Swedish citizens for their wrongful conduct.

## BACKGROUND

Before proceeding, it is necessary for me to inform the Committee that I am an attorney with the United States Department of State who served as one of the principal United States negotiators of the Convention on the Rights of the Child during nine of the sessions of the Commission on Human Rights when the Convention was being drafted (including the final four sessions while posted in Geneva as the Legal Counselor at the United States Mission). However, I do not purport in any way to speak for or otherwise represent the Department of State or the United States Government in this matter. In short, this communication is submitted to the Committee solely in my private and personal capacity, and was prepared and transmitted to the Committee through my own resources.

Further, for the sake of full disclosure and to state my interest in the subject, this communication is based largely on my personal experience and knowledge of the Swedish legal and social welfare systems, both as the parent of a child wrongfully retained in Sweden by a Swedish diplomat (ironically a former Deputy Assistant Under-Secretary for Human Rights in the Ministry of Foreign Affairs) and as an acquaintance of many other parents whose chil-

dren have had their rights violated by Sweden. Nevertheless, I trust that the Committee will recognize that every effort has been made in this communication to concentrate on the Swedish legal and social welfare systems, Swedish institutions, and patterns of Swedish conduct. This communication clearly does not contain the names and details that would characterize an individual or group complaint, and should not be viewed as such.

Finally, in the event that there are doubts about the “standing” of a citizen from a country that has signed but not ratified the Convention to criticize Sweden’s conduct, I would simply reply that Sweden’s misconduct impacts on non-Swedish or dual national children and their non-Swedish parents from many countries. Moreover, the United States, at both the Federal and state levels, has a far better record of compliance than Sweden with the actual terms of the Convention articles listed above.

### THE SWEDISH LEGAL AND SOCIAL WELFARE SYSTEM

Like Sweden’s ratification of the Convention, other relevant elements of Sweden’s legal system look progressive and humane on paper, but it is crucially important for the Committee to distinguish between appearance and reality in Sweden. And reality in Sweden with respect to family law and child abduction/retention matters must begin with the absence of adequate and effective enforcement mechanisms to promote and protect the rights of the child under the articles of the Convention listed above.

Several other pertinent examples of form versus substance exist in the Swedish system. In theory, Swedish parents who abduct or withhold a child from the other parent can be found unfit *per se* by a Swedish court, and lose custody. But this occurs very rarely, and, according to Swedish legal experts, never in international cases where the consequence would be that the child leaves Sweden to reside elsewhere.

In responding to this communication, Swedish Government authorities may also direct the Committee’s attention to the new joint custody law that entered into force on 1 October 1998 as an example of progress and reform. That may appear true on paper, where for the first time Swedish judges can impose joint custody over the objections of one or perhaps both parents. (Previously, Swedish courts were required to give sole custody to one parent, and that was automatically the mother in virtually every case.) But nothing has changed to enable Swedish courts to enforce the terms of joint custody. Even if the Committee is not prepared to accept the prediction that joint custody will rarely if ever be imposed over the objections of a Swedish mother, and never if the father is non-Swedish and residing outside Sweden, the inescapable reality (especially for the children involved) is that any Swedish joint custody orders under the new law will be just as unenforceable as the standard sole custody order has always been in terms of securing enjoyment of the rights of a child abducted or wrongfully retained by a Swedish parent.

More precisely, in regular child custody cases and in cases involving either domestic or international child abduction and wrongful retention of children, the current Swedish legal and social welfare systems guarantee that the child will completely lose one parent, UNLESS the custodial or abducting parent decides otherwise. As a practical matter, the exercise of child custody jurisdiction by a Swedish court effectively terminates the child's relationship with the non-custodial parent, both in purely domestic cases, or in international abduction/retention cases where Sweden fails to return a child in accordance with its obligations under the Convention (and, when applicable, the Hague Convention on the Civil Aspects of International Child Abduction).

As indicated above, Sweden essentially gives the custodial parent (who often has already abducted or wrongfully retained the child) a veto power over every aspect of the child's relationship with the non-custodial parent. Thus, despite all the standards and safeguards enumerated in the articles of the Convention cited above, Sweden leaves each child's relationship with non-custodial and non-Swedish parents at the mercy of the Swedish custodial parent. By perpetuating this cruel and irresponsible system, the Government of Sweden completely disregards its international legal obligation under the Convention to protect and ensure the child's rights to substantial contact with both parents and both extended families and, in international cases, with both countries and cultures as well. In short, the Swedish legal system does not and cannot either control the conduct of Swedish custodial parents or protect the rights of children to contact with non-custodial and non-Swedish parents.

In a recent demonstration of the Swedish legal system at its worst (one that is well known to Swedish Government officials), the Swedish Supreme Court ignored the objections of a non-Swedish father and permitted the Swedish courts to take custody jurisdiction and award sole custody of two children to a Swedish mother in a case where the children had been born and always resided outside Sweden, had apparently never even visited Sweden, and were unquestionably abducted to Sweden. As the leading Supreme Court case in this area, it is of interest to the Committee as Swedish law, not just as an individual case.

## THE SIX PILLARS

The continued existence of the following six "pillars" of Sweden's sophisticated and well-financed international child abduction system (most of which also apply to regular custody cases in Sweden) demonstrates the extent to which the Government of Sweden has failed to implement, and/or violates, the ten articles of the Convention listed above:

1) The absence of any legal mechanism comparable to "contempt of court" in common law countries that can enforce the rights of children, for example, to have contact with both parents and, in international cases, with both countries. More than any other factor, the impossibility of effective enforcement machinery for Swedish civil court orders means that Sweden cannot give effect to the rights recognized in the Convention at issue here, even if individual

judges might wish to do so.

2) Extreme gender and national bias of Swedish courts. This is common knowledge in Europe, North America, and perhaps in other regions, and is not a subjective or unsubstantiated allegation. Accurate and complete statistics from Swedish child custody proceedings, which the Swedish Government may be unwilling to supply to the Committee, would unquestionably reveal that Swedish courts grant sole custody to Swedish mothers virtually without exception in both domestic and international cases. Swedish courts have almost certainly never granted custody to a non-Swedish father residing outside Sweden. This national bias is also exemplified by the grotesque but not uncommon practice of Swedish judges granting non-Swedish fathers visitation of their children only in Sweden, and often only under social welfare, police, or other supervision.

3) Unlimited Swedish Government payment of legal fees in Sweden and abroad for Swedish citizens who are involved in regular custody proceedings or who abduct or wrongfully retain children. Except for a relatively few low income individuals who can qualify for legal aid in Swedish proceedings, non-Swedish parents are confronted by the “deep pocket” of the Swedish Government in both custody and abduction/wrongful retention litigation wherever conducted. In exhausting their savings and other resources while fighting against the Swedish Government to uphold the rights of their children set forth in the Convention articles listed above, most non-Swedish parents suffer irreparable financial harm. Ultimately, as with every other aspect of this problem, it is the children involved who suffer most from the permanent and unnecessary waste of resources in each case caused by the Swedish Government.

4) Misuse of Swedish law enforcement authorities to enforce a criminal law intended to protect and reward Swedish parents who abduct or wrongfully retain children. The third attachment to this letter is the English translation of a provision from the Swedish Criminal Code that was drafted, in the exact words of two senior Swedish prosecutors, primarily for use against “fathers from the South.” This refers to African and Arab fathers who, when denied access to their children despite their joint custody rights in Sweden, respond by taking the children to their home countries. Along with gender and national bias in favor of Swedish mothers, it is common knowledge that the Swedish courts are characterized by racial bias in such cases. Even if the Committee is not prepared to accept that assertion, a brief examination of the plain language in the second paragraph of the attached Swedish criminal law (marked “For use against non-Swedish fathers) reveals a “law” that anticipates wrongdoing by Swedish citizens (child abduction or retention) and punishes parents with joint or sole custody who respond by attempting to exercise their custody rights. Whatever its original intent, this law is used against all non-Swedish fathers. It was wrongly used, for example, to detain me for two days (for which I have since been compensated by the Swedish Government) after I exercised my sole custody rights under the only custody order in existence and my joint custody rights even under Swedish law.

5) Absence of the principle of comity from the Swedish legal system. The rights of children are severely harmed by Sweden's lack of respect for non-Swedish laws and court orders, even when the orders concerned result from trials or appellate litigation financed and often initiated by the Swedish Government.

6) In international child abduction and wrongful retention cases, the refusal of Sweden to extradite or effectively prosecute Swedish nationals. As with every other facet of the Swedish system, it is primarily the children involved whose human rights are violated by Sweden's status as a sanctuary for child abductors/retainers.

#### ARTICLE-BY-ARTICLE ANALYSIS:

Article 2: Sweden does not respect and ensure all the rights in the Convention for children with a non-Swedish parent, as discussed above, and thus discriminates against such children.

Article 5: Sweden only respects one parent and one extended family by failing to protect the child's relationship with the other parent and extended family, thus assuring the elimination of that parent/family from the child's life.

Article 8: By failing to ensure that the child has substantial contact with both parents and both extended families (and both countries and cultures in international cases), Sweden clearly does not respect the right of the child to preserve his or her full identity, nationality, and family relations.

Article 9: Sweden does nothing to facilitate personal relations and direct contact for a child separated from one parent (and has no effective means of doing so without something like contempt of court) and, as discussed above, supports and rewards the parent responsible for the separation.

Article 10: In international cases, as discussed at length above and in the attachments, Sweden does not respect the right of the child to maintain regular personal and direct contacts with both parents, and to leave Sweden. As a practical matter, the Swedish legal and social welfare systems are wealthy and indispensable accomplices of Swedish parents who abduct or wrongfully retain children.

Article 11: As discussed above, Sweden combats any transfer of children abroad from Sweden, while at the same time essentially encouraging and rewarding abduction of children to, or wrongful retention of children in, Sweden.

Article 16: By stepping aside and leaving children under the total control of the Swedish custodial parent, the Swedish legal and social welfare systems guarantee arbitrary and unlawful interference with the child's overall family (i.e., the non-custodial or non-Swedish

parent).

Article 18: Notwithstanding Sweden's lip service to the principle of gender equality and its new but unenforceable joint custody law mentioned above, the reality is that the Swedish legal and social welfare systems virtually guarantee the elimination of one parent from the child's life, since non-custodial parents have no significant enforceable parental rights in Sweden.

Article 29: Since the norm in Sweden is that one parent is eliminated from the child's life in divorce and abduction/retention cases, it is highly unlikely that the Swedish educational system is developing respect for both parents. Moreover, since the Swedish educational system is so ethnocentric, for example, that it teaches little or nothing about Western Hemisphere history and culture, the education of the child in Sweden is clearly not directed in international cases to development of respect for overall cultural identity/language/values and the national values of the country from which he or she may originate.

Article 35: As with Article 11 above, Sweden may take measures to prevent the abduction of children from Sweden, but, as detailed above and in the attachments, the overall Swedish legal and social welfare systems actually constitute a Swedish Government Child Abduction/Retention System that facilitates, finances, otherwise supports, and rewards abduction and wrongful retention of children by Swedish citizens.

## CONCLUSION

For too many years, the Swedish Government has succeeded in portraying itself to the international human rights community as a staunch defender of children's rights in general and a leading proponent of the Convention in particular, while at the same time maintaining a legal and social welfare system that systematically violates numerous fundamental rights of children recognized in the Convention and identified above. For too many years, the international human rights community has remained silent about the difference between the reality of Sweden's actual conduct toward children in the areas under discussion here and Swedish Government rhetoric in support of countless human rights initiatives. It is respectfully requested that the Committee on the Rights of the Child remedy this situation in two ways:

FIRST, by alerting the General Assembly and the international community generally to the ongoing violations by Sweden of the rights of children already within Sweden and the risks to children that may be taken to Sweden in one way or another, and,  
SECOND, by utilizing its authority under Article 45(d) of the Convention to make suggestions and general recommendations to Sweden (reported also to the General Assembly) concerning the measures that Sweden must adopt to give effect to the rights in question, to eliminate current Swedish violations of the Convention, and to prevent future ones.

Under its current legislation, policy, and practices, as described in this communication, the Government of Sweden does not fully implement or comply with the articles of the Convention discussed above (2, 5, 8, 9, 10, 11, 16, 18, 29, and 35). In addition to addressing the cruel impact of Sweden's current violations of the Convention on the children affected today, it is hoped that the Committee will also be particularly concerned with the absolute certainty of continuing and future Swedish violations of the Convention affecting thousands of children in Sweden or at risk of being taken to Sweden, unless immediate and sweeping reforms of Swedish laws, policies, practices, and judicial conduct take place.

Sincerely,

Thomas A. Johnson  
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