

TESTIMONY
OF
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BEFORE THE
TOM LANTOS HUMAN RIGHTS COMMISSION
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING
ON
INTERNATIONAL CHILD ABDUCTION

DECEMBER 2, 2009

Distinguished Members of the Commission,

My name is Patricia Apy. I practice family law, and for much of the last two decades I have concentrated my practice in international and interstate child

custody litigation. A significant portion of that practice involves international abduction to countries who have *not* signed the Hague Convention on the Civil Aspects of Child Abduction. I have, for the last five of those years represented David Goldman in his efforts to secure the repatriation of his son Sean. However my involvement and deep concern regarding the domestic and international legal issues surrounding the human tragedy of international parental child abduction preceded my meeting David. I served for a decade from 1991 to 2001 as the Chair of the International Law and Procedure Committee of the Family Law Section of the American Bar Association. It was during that tenure, that I served as an attorney advisor to the American delegation to the Hague Conference on Private International Law and later served as a Delegate providing the perspective of the private practitioner to those diplomats charged with the negotiating several of the Treaties authored at the Hague Conference involving families and children. In August of 2001 I was appointed as the liaison to the American Bar Association Standing Committee on Legal Assistance for Military Personnel. My role was to begin to address the difficult interstate and international family law issues facing our military members. Of course, I did not imagine that less than a month later, we would be at war, and those issues would become even more compelling.

I have visited Judge Advocates on bases around the world, providing Continuing Legal Education and support regarding international parental

abduction around the world . It is that perspective that I hope to share in my brief remarks, in supporting this remarkable opportunity to review the issue of international parental abduction and begin the arduous task of seeking practical and predictable results for parents and children .

While international parental abduction is on the rise, the goal for practitioners, judges and parents is first to prevent parental abduction. The majority of parents from international family and cultural backgrounds seek to resolve their custodial disputes by agreement. However, the ability to utilize alternative dispute resolution, and resolve these cases is hampered by the lack of compliance with the treaty, the lack of objective and accurate information available to parents, and the lawyers and judges assisting them , upon which to rely in fashioning agreements and orders.

In the case of non Treaty signatories parents are left with expensive litigation in both countries, with little or no assurance of mutual recognition or enforcement. And once an abduction occurs, Left-behind parents seeking the return of their children or the ability to simply visit children endure endless legal battles, conducted in languages they do not speak and suffer emotional and financial ruin.

For military members, whose changes of geography are not voluntary, cases of parental abduction are overrepresented, even in our reported decisions. Most

military members have neither the access to legal services nor the resources to address a parental abduction, if they were able to obtain leave from their military duties to do so.

The case for Reciprocity:

The issue of compliance with the Hague Convention on Child Abduction must be a crucial aspect of legislative efforts . The Abduction Convention is a reciprocal treaty. The primary goal of the Treaty is to deter international parental abduction by insuring a disincentive for doing so. By providing a unique abbreviated process with a limited and specific remedy, that of the immediate return of a child to the state of habitual residence, parents may rely upon this process when they enter into agreements for parental access and time sharing with their children. Judges in fashioning orders permitting summer access, or visits to grandparents abroad, refer to the Treaty status and rely upon the reciprocal obligations in making their determinations. When there is no compliance, and when there is no objective way of evaluating compliance, families and those engaged in resolving family disputes reasonably rely upon the Treaty to their detriment.

In order to prevent parental abductions, families, mediators, lawyers and judges must be in a position to evaluate the potential risk of an abduction , by accurately evaluating the obstacles to recovery found in a given country, were a wrongful removal or retention occurred.

When a country is not compliant, when the Department of State has identified patterns of non-compliance, that information must be communicated in real time, in an objective way, and the status of Treaty reciprocity evaluated and disclosed. Finally, in circumstances where there is no reciprocity, to protect families and children diplomatic and legislative efforts must be made with urgency and vigor to identify the problems and to seek immediate solutions. No individual parent is in a position to litigate and fight a battle which appropriately belongs at a nations-state level, which is what each left behind parent is required to do when they attempt to retrieve their child from a country that identifies itself as a Treaty signatory, but refuses to abide by its obligations.

Non-Hague Countries:

This hearing is the first one ever to address international child abduction to countries which are not Treaty signatories. Many countries with whom the United States enjoys partnership in economic or strategic efforts are not Treaty partners. Japan, India, Pakistan, to name but a few. Having litigated parental abduction cases in many non-Hague countries, spoken before members of their judiciary and bar, it is clear that more formal diplomatic tools and efforts must be used to address these problems. By including the use of Memoranda of Understanding

and bi-lateral agreements which address the nuances and individual legal and cultural challenges found in many of the family law systems, we would be able to fine-tune a mechanism for the return of abducted children .

Military Parents

It is important to remember parents who serve our country and consider their unique circumstances. There must be a dedicated effort to provide legal services to military members, particularly those abroad and deployed whose children are subjected to wrongful removal and retention. Diplomatic efforts have to be made to address international parental kidnapping issues when negotiating Status of Forces agreements, and other necessary obligations associated with our service members service abroad.

Conclusion

As you are already aware, David Goldman is not the only left-behind parent, and I am most certainly not the only family lawyer working to see that families and children are protected from the scourge of international parental abduction. The American Bar Association, Family Law Section and International Sections in particular have been asked by the President of the ABA at the request

of Congressman Smith, to review these issues and to make recommendations on legislation that he has sponsored. We have been doing so, and my colleagues continue to provide incredible insight and advice and a willingness to work with the members of Congress to improve the working of the Treaty, to enhance the diplomatic efforts on behalf of children at the Department of State and bring every abducted child, home.

Thank you.