

**TESTIMONY
OF
PATRICIA E APY**

**BEFORE THE
SUBCOMMITTEE ON AFRICA
GLOBAL HEALTH, GLOBAL HUMAN RIGHTS AND
INTERNATIONAL ORGANIZATIONS**

UNITED STATES HOUSE OF REPRESENTATIVES

**HEARING
ON
RESOLVING INTERNATIONAL PARENTAL ABDUCTIONS
TO “NON-HAGUE” CONVENTION COUNTRIES**

MAY 9, 2013

Chairman Hon. Christopher H. Smith (NJ) ; Ranking Member Hon. Karen Bass (CA) and distinguished Members of the Committee;

My name is Patricia Apy. It is my privilege to be permitted to address this Sub-Committee as it confronts the issue of International Parental Abduction, particularly abductions involving jurisdictions which have not ratified the Hague Convention on the Civil Aspects of International Child Abduction (Non-Hague) . As reflected in the information outlining my professional experience much of the last two decades I have concentrated my practice primarily on international child custody litigation, with particular attention to cases of the wrongful removal and retention of children in Non-Hague countries .

I have litigated child custody disputes including cases with allegations of child abduction in numerous non Treaty countries and written extensively on managing child custody cases involving Non-Hague Contracting states. It is that perspective that I hope to share in my brief remarks.

Today I wish to highlight the international diplomatic and legal issues implicated in Non-Hague abductions,

. To illustrate the issues I would share two demonstrative cases. I have been representing Michael Elias, one of the witnesses on this panel, in a pro-bono capacity in response to the request of the former Commandant of the United States Marine Corps, General Conway. This battle wounded marine discovered his two children had been abducted by their mother to Japan. Mr. Elias' ex-wife worked for the Consulate of Japan in New York and with the help of Japanese consulate authorities in Chicago was able to obtain the replacement of the children's

court ordered surrendered Japanese passports and abduct his children. Mr. Elias will share in his testimony that the Japanese government not only failed to address the clearly criminal behavior of his wife, the complicity of the their consulate in Chicago but their duplicity in telling a member of this subcommittee, along with the grandparents of these children, that they were actively investigating the criminal behavior, when in fact they had already determined that they had no intention of doing so. That information would be purposefully withheld for over a year from Mr. Elias.

Christopher Dahm', daughter Gabrielle was abducted from her home in Florida to the United Arab Emirates specifically Abu Dhabi, by her Belgian mother. Gabrielle's mother brazenly obtained a Belgian passport for her daughter, without the knowledge of Gabrielle's father, despite a Florida order which prohibited the issuance of the passport, or the removal of Gabrielle from the United States. She abducted her with the assistance of the maternal grandfather, a pilot for Eithad airlines. That case is being prosecuted by the United States Attorney in Miami Florida, which issued Interpol red orders and indictments for the abducting mother and her parents.

Non- Treaty cases present the most expensive and challenging cases for the left behind parent seeking the return of wrongfully removed or retained children. Parents are often consigned to live in legal limbo for fear that their chance to locate or retrieve their child will be diminished by their actions. Fearful of ruining their case, they avoid divorcing the kidnapping spouse, or resist filing criminal complaints as such action might cut off legal remedies under foreign law. Some must seek law enforcement assistance to physically locate their children, and of necessity must file an application in the country to which the child has been taken, seeking a custodial determination that a court in the United States had already rendered.

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.

The cases of the Elias and the Dahm families are particularly demonstrative in that the countries to which these children have been taken, we would identify as ones with whom we enjoy strong ties of cooperation and economic partnership, and the reputation of a culture of respect for the rule of law.

Non-Hague Countries:

Japan: The current status of the resolution of existing abduction cases and the promise of the ratification of the Hague Abduction Convention must be considered illusory at best and deceptive at worst. As illustrated in the very recent April 17th 2013 article in the Japan Times, Japan is described “finally being poised to join the 89 other member states, if the Diet approves related bills as early as next month.” However, the article goes on to acknowledge what practitioners of International Family law and left behind parents already know. Japanese authorities have repeatedly stressed that in any case where an unsubstantiated claim of “domestic violence” is voiced, the children will not be sent back “regardless of the Convention”.

According to the Japanese family courts, in 2001 there were 409 cases of parents seeking the return of their abducted children within the court system. By 2011, that number had jumped to 1,985. Keep in mind that this is a number conceded to be low, as it represents only those cases acknowledged by the courts.

A cursory review of the proposed enabling legislation demonstrates that as a practical matter it contains significant obstacles to the reciprocal protections upon which the other 89 Treaty partners and American judges are expected to rely. Notably, the current text of the enabling

legislation provides that if an abducting parent has been subjected to any criminal sanctions as the result of their behavior and is being criminally prosecuted such prosecution will be an absolute defense to a return. Thus, this legislation expressly encourages self help and potentially criminal behavior by assuring the abducting parent a safe haven where Japanese parents that they will not be prosecuted.

Actions of OCI/ State Department Japan Desk: Parents who have pending abduction matters have been sent, from time to time, “urgent” time- sensitive updates , repeatedly announcing the proximity of the Hague ratification and the launch of various “Hague Convention pilot programs”. Japan’s Ministry of Foreign Affairs offered to “familiarize parents whose children had been abducted with Japan’s family court system as part of their expected ongoing function as Japan’s prospective central authority under the Treaty. The program was described in the e-mail as being “in direct result of the U. S. Department of State’s request for Japanese government assistance with existing cases.” The State Department sent in an email “while *the US Department of State cannot recommend or endorse any specific program we encourage parents to consider participating in this unique, cost free opportunity to learn more about Japan’s legal system.*” Keeping in mind, that this is going to desperate parents, who have had no contact with their children in years the “encouragement” to participate by our government “in preparation for joining the Hague Abduction Convention” seems as though advocacy for the left behind parent is about to occur. In fact, parents were “encouraged” to abandon their request for the return of their abducted children and to offer to support the abducting parents with financial assistance.

Again on December 6, 2012 parents were forwarded an “urgent- time sensitive Update announcing the start of a mediation program. Parents were given a little over a week to indicate

they wished to participate by filing a declaration of interest in the program on or before December 13, with applications being open only between December 7 to December 26. Once again, parents were encouraged to participate. However, a careful reading of the fine print made it clear that the goal of the program was not genuine mediation but more akin to theatre.

- The notice indicated that it provided that it only one, one hour session.
- The notice provided that as a condition of having any possibility of seeing their abducted child a parent would have to abandon the issue of parental abduction and waive the remedy of return completely. Nevertheless the issue of the ongoing financial support of the child could be included in the mediation discussions.
- The left behind parent would bear the expense for the mediation, which would be conducted in Japanese, foreign lawyers, including those who might have litigated or prosecuted the case in the left- behind jurisdiction were not permitted to participate.

In its most recent letter to left behind parents in April, they are informed that Principal Deputy Assistant Secretary Bond and OCI director Payne travelled to Tokyo to encourage the ratification of the Abduction Convention and to “continue to raise the question of how Japan intends to resolve the existing cases.” They indicate in the message that PDAS Bond and CI Director Payne “encouraged Japanese government officials to continue ‘bilateral discussions’ on how to resolve existing cases that “may fall outside the Convention framework upon ratification in accordance with Convention principles.” In fact, both women, and Ambassador Jacobs realize that as a matter of law the Hague Abduction Convention may by its terms *only* be prospective in application. The historic position of the Department of State has been against the use of Memoranda of Understanding or other bi-lateral agreements in favor of the ratification of the

Abduction Convention. However in the instant case one must wonder regarding language in the proposed Hague Abduction legislation that will not provide appropriate reciprocal protections.

Abu Dhabi: Where personal status law regarding children and child custody implicate the application of religious law, consideration of bi-lateral agreements providing a unique mechanism of mutual recognition and enforcement of orders must be considered. The Dahm case, however, provides an example of the deficiencies in the international criminal prosecution of child abduction cases and a lack of commitment to aggressive prosecution of such cases where appropriate.

In the case of Christopher Dahm, although a red order was issued, and acted upon, the UAE judge declined to order the arrest, despite the fact that neither the victim nor the alleged perpetrators were from the Emirates. Mr. Dahm has been repeatedly assured by UAE authorities that if United States law enforcement or government officials indicated that they were serious about the arrest and extradition of parental kidnapping cases, or other diplomatic sanctions attached for harboring such fugitives, they might be better persuaded.

In the summer of 2010 after receiving a disfavorable decision from the court, Leslie Delbecq with her parents abducted her daughter. It would not be until late June of 2011, after Mr. Dahm and counsel personally met with the Assistant United States attorney in Miami, that indictments were issued. Thereafter virtually nothing happened to confirm Gabby's location, or to continue the prosecution. Meetings were scheduled and cancelled at the last minute and the FBI agents investigating the matter would not return Mr. Dahm's phone calls. Eventually it was clear that whoever had been working on the case was no longer doing so. In February 2013 Mr. Dahm insisted on a meeting with the AUSA assigned to the case and her supervisors... At the meeting, it was clear that no FBI involvement was continuing, nor was law enforcement or Interpol

providing any pressure upon the UAE authorities to facilitate the location of Gabrielle, let alone her retrieval . When pressed about the concern about his daughter's whereabouts the US Attorney represented that an update would occur. A month later, after Mr. Dahm's counsel again sought a response and almost two years after the indictment Mr Dahm was finally given the name of an FBI agent but told that since they had no agency presence in Abu Dhabi, his quest for the location of his daughter would be better asked of the State Department. Our client still has no confirmation that his daughter is in the UAE, and it appears that nothing has been done by the FBI to assure that the indicted and fleeing felons have been prevented from travelling out of the UAE.

Conclusion:

Particularly in addressing the threat of international abduction to Non Treaty countries the partnership of the FBI and the United States Attorney is crucial in those cases warranting it. I propose that where the child has been located, and indictments issued, the message to the foreign government must demonstrate that here in the United States we value our children and will work tirelessly for the return of every abducted child. The actions of the United States attorney in prosecuting pursuant to the International Parental Kidnapping Crime Act makes it clear that international parental kidnapping is a crime and should be treated as such. That MOU's and bilateral agreements are seen as part of an arsenal available to the Department of State to address the unique legal and cultural framework of international family law. Finally that legislation which provides genuine diplomatic tools to insure and enforce reciprocal treaty obligations is enacted by this Congress.

Thank you.

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