

DRAFT

March 25, 2015

TESTIMONY OF SCOTT SAWYER

Thank you Mr. Chairman and Ranking Member Bass, for your ongoing support in this matter. I ask the Chairman's consent to submit my entire written testimony for the record and submit additional parents' testimony as well.

Although his parents were divorced, my son Wayne benefitted from court orders giving him equal time with both parents. I dropped him off to visit his mother on Sunday December 14, 2008, expecting to see him on Thursday and then bring him over the weekend to the 26th Street Park in Santa Monica, where he enjoyed feeding the ducks. But he was kidnapped from Los Angeles and taken to Japan the next day, at the age of two years, four months old. I have not been able to see him or speak with him since. There are other aggravating factors in Wayne's case, including repeated deceptions by Japanese diplomats in the U.S. about the false Japanese passport Wayne traveled under, and his mother's on-camera confession to ABC News in February 2011, in which she chuckled on-camera at how easy it was to fool the U.S. authorities, while Wayne played in the background.

His kidnapping represents a perfect storm of failure across all levels of government. The LA Superior Court's custody, travel ban and passport surrender orders, designed to prevent his kidnapping, were defeated by organized criminal activity. The court cannot in reality enforce its orders outside of its walls. DHS, TSA and Customs and Border Patrol do not have any serious system in place to interdict such kidnappings at airports. U.S. diplomats directly discussed return cases with Japan for over two years without result for Wayne, but the discussions apparently ceased, after Japan's accession to the Hague Convention on the Civil Aspects of Child Abduction. There is apparent institutional drift regarding the roles of the Justice Department and State Department in international child kidnappings. Undeterred perpetrators exploit the absence of an integrated U.S. government response, with little fear of ever facing justice.

Let's contrast the governmental response to domestic interstate kidnappings. There are Amber Alerts, interstate police mobilizations, special FBI teams, systematic investigation, arrest and leveraging of accomplices, apprehension of perpetrators, and frequent returns of the children. It is an integrated response and there are prosecutions and deterrence.

People would be rightly outraged if the states handled domestic kidnappings like the federal government and the Hague handles international ones, and for good reason. The laws say that children like Wayne are victims of crime, no different than children kidnapped from California to Texas. On the state level, the Uniform Child Custody Jurisdiction and Enforcement Act says that international child kidnappings are to be treated the same as domestic ones that cross state borders. The legislative notes in the 1993 International Parental Kidnapping Crime Act state that the Justice Department should have primacy in international child kidnappings, with Department of State in a subservient role.

Since IPKCA passed, the defined roles have gradually reversed, apparently due to institutional drift. The Department of State, which is not a law enforcement agency, has taken the lead, and the Justice Department has filed fewer and fewer IPKCA cases. A 2008 FBI Inspector General report found that IPKCA cases declined by half from 2000 through 2007. The FBI has the same affirmative duty under the law to investigate and prosecute child kidnappings, whether they are domestic or international. Because State does not as a practice file Extradition warrants for IPKCA cases, FBI agents are disincentivized from working up the cases. Now, State has received even more authority over the crimes, because 11 sections of the International Child Abduction Remedies Act, which was the U.S. Hague implementation law, has been removed from the U.S. Code and put under the State Department. We should also consider that The Hague's Best Practices Guide states that when there is a new contracting state, the first and primary choice for the Central Authority should be the Ministry of Justice, or its equivalent.

There is also the issue of conflict of interest. To paraphrase attorney Patricia Apy in a previous hearing, the client of the State Department is not the American citizen crime victim in the street. The client of the State Department is the U.S. government.

I suggest that the future legislative goals of this chamber will be enhanced if it can fuse the successful approaches of the domestic kidnapping law enforcement model, and the root principles of the UCCJEA, IPKCA, and Hague Best Practices, into a rapid response whenever a criminal international child kidnapping takes place.

In 2009 I became an officer of Global Future. In 2010, we helped bring the two Mendoza children home to New Jersey from South Korea. New Jersey law enforcement took the lead, with an assist from the State Department. In 2011, we helped bring Karina Garcia home to Wisconsin from Japan. She was the first kidnapped child ever returned from Japan through the criminal law enforcement process. Since then, we helped return three other children from Asia, Europe and South America.

Japan's overdue accession to The Hague in April 2014 was not retroactive; return applications could not be filed in open cases like Wayne's. As Japan's implementation of the treaty neared, the State Department distributed information and instruction to U.S. parents on how they could petition the new Hague courts in Japan for limited "access" to their children in Japan.

This is offensive. Wayne would not be in Japan in the first place if not for criminal acts committed on U.S. soil and the mischief of a foreign government. The State Department is not inclined to serve law enforcement warrants or extradition requests. State apparently gave up on direct talks for his return, possibly in exchange for Japan's Hague accession, which is not retroactive for returns in open cases like Wayne's. State is offering his legal custodial-parent father submit an application to a foreign court in the home country of a fugitive, and plead for a couple weeks of undefined and unenforceable access. These are the same Hague courts that accept 'best settled' argument against returns when the child is settled in the new environment after one year. Hague judges sometimes also deny returns when the abductor has warrants on them. In this way, the Hague judges aid and abet fugitives and are accessories after-the-fact. None of this would be acceptable if the kidnapping occurred within the United States. Why does

the federal government think this should be acceptable to American parents of children kidnapped to countries abroad?

Wayne is the victim of a crime, with ongoing Constitutional rights to due process in the justice system and all departments of the U.S. government should treat him as such. The Constitution entitles him to equal protection under the law. He deserves justice like any other crime victim. He is not diplomatic chattel to be traded in exchange for another country's accession to The Hague. In kidnapping crimes against children, the long arm of the law has proven more effective than the long conversations of diplomats.

In conclusion, I hope the committee will take up the suggestion a Congressman made in one of the chairman's previous hearings, that the Foreign Affairs and Judiciary Committees should have a joint "no holds barred" discussion and develop an integrated, sustained and timely way to respond to international child kidnapping crimes. The expertise and knowledge of this committee and of Judiciary is vast. I have every confidence that the two committees working together will produce a plan of action that will build on your formidable body of work and leave a legacy of fewer and fewer kidnapped children for generations to come. Thank you.