PARENTAL KIDNAPING PREVENTION ACT OF 1979, S. 105

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

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ON

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THURSDAY, JANUARY 30, 1980

SUBCOMMITTEE ON CRIMINAL JUSTICE,
SENATE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT,
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittees met, pursuant to notice, at 9 a.m., in room 6226, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr., acting chairman, presiding.

Present: Senator Mathias.

Also present: Elizabeth McNichols, staff assistant; Patricia Hoff, legislative assistant to Senator Wallop; Susanne Martinez, counsel, Subcommittee on Child and Human Development; Ann Hawkins, staff assistant, Judiciary Committee; Mary Lopatto, legislative assistant, Subcommittee on Child and Human Development; Edna Panaccione, chief clerk; John Riley, legislative assistant to Senator Durenberger; Barbara Parris, research assistant, Subcommittee on Criminal Justice; Lillian McEwen, counsel, Subcommittee on Criminal Justice; and Eric Hultman, minority counsel, Judiciary Committee.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. The joint hearing will come to order.

Today the Senate Subcommittees on Criminal Justice and Child and Human Development will examine a problem of increasing concern, the abduction of a child from one parent by another parent; and a proposed solution, Senate bill 105, the Parental Kidnapping Prevention Act of 1979, which was introduced by our distinguished colleague from Wyoming, Senator Wallop.

Last April, my distinguished colleague from California, Senator Cranston, held a hearing in Los Angeles on parental kidnaping; I am happy that we can meet together this morning with all of you to further investigate this troubling issue.

The problem of child snatching is greater today than ever before. More than 10 million children under the age of 18 live in families headed by a single parent. Although accurate figures are not available, it is estimated that between 25,000 and 100,000 children are the victims of interstate child snatchings each year.

With the escalating divorce rate and our increasingly mobile society, these figures are on the rise. The American family and American

society are in flux. We are in a whole new ball game, where the old rules no longer apply and the new rules haven't been written. Small wonder that custody disputes have been called "potential interstate nightmares."

The reasons child snatching has become a problem of such frightening proportions are not hard to find.

First of all, custody determinations rendered in one State may not be honored by other States. As a result, a parent who is dissatisfied with a court's original custody determination may snatch the child and flee to another jurisdiction, intending to defeat the original court order and hoping to obtain a more favorable second ruling.

The adoption in 39 States of the Uniform Child Custody Jurisdiction Act, providing for the recognition of the custody decrees, is an important step toward limiting this kind of forum shopping. Nevertheless, other States remain as havens for child snatchers.

Snatching parents often take great pains to cover their paths, and substantial cost may be involved in tracking the abductor from State to State. As a result, all too often the parent from whom the child is taken is unable to locate the child and the ex-spouse, and the original decree becomes worthless.

To their credit, some jurisdictions, including my home State of Maryland, have enacted laws designed to curb child snatchings. However, such laws are of limited effectiveness due to the interstate nature of the conduct, and the Federal Government, which could overcome these territorial limitations and make child snatching a national offense, has yet to do so. In fact, parents are specifically exempted from the coverage of the Lindbergh law, the Federal kidnaping statute.

Senate bill 105, and the companion House legislation address each of these problems and attempt to define the role of the Government in preventing parental kidnaping, and assisting a parent whose child has been taken.

Obviously, the emotional and economic costs which the parent or legal guardian incurs under present law as the result of a snatching may be very great indeed. In some instances a distraught parent, finding efforts to regain custody of the child stymied by local law enforcement and the courts, may in desperation decide to go it alone and resnatch the child. In addition, many parents have plunged into debt, hiring private detectives to search the country for the child, and, once the child is located, travel to the other State to relitigate the issue of custody.

But the cardinal principle which should guide the courts and the law and the Congress in this matter is the welfare of the children because they are the real losers in this desperate game. Their best interests should be our foremost consideration. I hope that that is what we will keep in mind as we investigate this very serious issue today.

Senator Cranston?

Senator CRANSTON. Thank you very much, Mr. Chairman.

I will place virtually all of my opening statement into the record to conserve time.

I do want to express my appreciation to you, Senator Mathias, and to Senator Biden. Don't wait to hear it. Go where you have to go. [Laughter.]

Senator MATHIAS. Mr. Chairman, I will return in a very few minutes.

Senator CRANSTON [acting chairman]. Thank you.

Senator MATHIAS. I have an appointment at the White House that I must keep. I will be right back.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you.

I am very pleased that the Subcommittee on Criminal Justice of the Judiciary Committee and the Subcommittee on Child and Human Development of the Labor and Human Resources Committee are holding this joint hearing today on S. 105, the proposed "Parental Kidnapping Prevention Act of 1979."

Last April, the Subcommittee on Child and Human Development, which has general oversight jurisdiction over issues relating to the welfare of children and families, held a field hearing in Los Angeles to look into the problem of child snatching and the role of the Federal Government in this area. Testimony presented at that hearing from both parents and law enforcement personnel indicated the enormous social costs of this problem.

But what was most dramatically portrayed and repeatedly emphasized at this hearing—and what touched me most personally—was the tremendous heartache and anguish caused by these incidents of child snatching in which only 10 percent of these children are ever found again. Thousands of parents and thousands of innocent children are subjected to emotionally and psychologicaly damaging ordeals. That hearing convinced me that child snatching is, indeed, a subtle and serious form of child abuse.

Although the problem is frequently one of interstate—and sometimes international dimensions—there is presently no Federal law to deal with the situation. As the testimony at our field hearing demonstrated, it is relatively easy for a parent to defy a custody order in one State by absconding with the child to another State and instituting new custody proceedings. Although a considerable number of States have adopted the Uniform Custody Act, a number of States have not. In many other cases, the absconding parent simply disappears with the child, and the parent with legal custody has few resources available to assist in locating the child, let alone enforcing the original custody order.

In many States, kidnaping of children by one of their parents is not treated as a crime but brushed aside as a domestic issue in which the law should not become involved. At worst, a kidnaping parent might be liable to a contempt of court charge. Although a large portion of child snatching incidents involve flight across State lines, these cases are exempted under current law from Federal kidnaping statutes, and the Federal Bureau of Investigation, with rare exceptions, is unavailable to provide assistance in locating the missing children.

Our field hearing also brought forth testimony indicating that the absence of a Federal criminal statute on the subject of parental kidnaping inhibited parents from obtaining extradiction orders in cases involving international child-stealing problems. Efforts are ongoing now to draft an international treaty on child-stealing, and it was indicated at our April hearing that passage of S. 105 would be an important step toward such a treaty.

Although legal custody issues relating to divorce and child-custody matters have traditionally been within the domain of the States and not the Federal Government, it is within the province of the Federal Government to resolve problems that are interstate in origin and which the States, acting independently, seem unable to resolve. It is also within the province of the Federal Government to take action with respect to problems with international ramifications.

The peculiar interstate—and sometimes international—nature of child snatching and the inherent difficulties of individual States in dealing with problems that transcend State boundaries has resulted in recent years in attention being directed at this problem at the Federal level.

The legislation we are discussing here this morning, by requiring States to recognize the custody orders of other States, by authorizing the use of the existing Federal parent locator services, and by making it a Federal offense for parents to kidnap their children, would provide an array of approaches to deter child kidnaping. S. 105 offers substantial progress, as does our hearing here this morning, toward finding ways to spare thousands of parents and children these intensely disturbing and damaging ordeals.

I am grateful to Senator Mathias and Senator Biden for arranging this joint hearing with the Child and Human Development Subcommittee that I chair.

I also want to say it has been a pleasure to work with Senator Wallop, who has been a leader in this area. I am delighted you are testifying this morning.

Senator Wallop, we are delighted that you are here to be our leadoff witness.

STATEMENT OF SENATOR WALLOP

Senator WALLOP. Thank you very much, Mr. Chairman. My thanks, too, to Senator Mathias.

Mr. Chairman, I have a complete statement, together with attachments, which I would like to put into the record.

Senator CRANSTON. Fine.

Senator WALLOP. I have a summary of it which I would like to read this morning.

I would also like to thank Congressman Bennett, for his work in the same area on the House side. Working together, I think this time we may be able to have a measure of success in an area that it is plainly needed.

I might also say that it is not, as you well know, Mr. Chairman, my habit to hunt around searching for new crimes to put on the books or new ways to involve Federal agencies, but this happens to be an area I feel strongly the vacuum that exists at the present.

I would like to express as well my sincere appreciation to my colleagues on the Subcommittee on Criminal Justice and the Subcommittee on Child and Human Development for convening the joint hearing on S. 105. It is encouraging to me as sponsor of this legislation and to the hundreds of parents and children across this country who have long awaited action on this bill that the two Senate committees so keenly interested in the welfare of children have seen fit to make

this legislation their first order of business in the second session of the 96th Congress.

I applaud your every effort in helping to design an appropriate Federal response to an increasingly frequent, always heart-rending occurrence—the removal and restraints or concealment of a child from one parent by the other parent.

We do not know, and we cannot know, exactly how many children are abducted by their parents each year. Estimates range from 25,000 to 100,000. Neither number is surprising when viewed in light of the annual divorce rate nationwide, which reached more than 1 million in 1978, and the number of children affected by divorce, which tripled in 2 decades to more than 1 million at the present time.

While it would be useful for us to develop a reliable data base on the number of child snatchings, we ought not to dwell on numbers. The emotional detriment to the children and parents render the quantiative aspects of secondary importance.

The psychological and sometimes physical harm to the children involved, and to their parents, cannot be underestimated. A child psychologist from Texas told members of the American Bar Association family law division that child-snatchings induce fear, guilt, and anger in children and have long-lasting, emotionally damaging consequences for the child victim. Hundreds of parents have written to me describing the terrible ordeal they have experienced. Consider just one of these poignant letters from a Wyoming woman:

> Dear Senator Wallop: In the recent issue of Family Circle I read of your current efforts to make "child snatching" a Federal crime. I want to thank you and wish you every success.
>
> I was one of the "lucky" ones. My ex-husband returned our 18-month-old son. I didn't know a human being could bear such pain and not die."

Not every case has a happy ending, as you are well aware, Mr. Chairman. In fact, the vast majority of letters received by Members of Congress come from grief-stricken parents who are pleading for help in their still unresolved cases. An analysis of the hundreds of letters and other communications I have had with child and parent victims of snatchings suggests that the intrastate child snatching is more readily resolved than is the interstate or international snatching. In the intrastate case, a parent, for one reason or another almost always related to a marital dispute destined for divorce, will spirit away his or her child to another locale within the same State. In these cases, State and local law enforcement officials and the courts have had reasonable success in locating the disappearing parent and abducted child, and in applying the State laws. Here, issues of custody and visitation can be decided and punitive actions taken.

Much more difficult to resolve are the growing number of cases in our highly mobile society in which a parent seizes the child and flees to another State or to a foreign country. While many States have taken legislative steps to prevent child snatchings through the enactment of criminal statutes and through the adoption of the Uniform Child Custody Jurisdiction Act, the success rate local officials have in intrastate cases plummets in interstate and international snatching. The laws and procedures in place in a State to locate missing persons, to prosecute snatching parents and, to a lesser extent, to try custody

cases, are frustrated by the removal of the child from within the State's borders.

I have included an in-depth discussion of State criminal and civil laws concerning child snatching in my written statement and will not get into that now in the interest of time. The rash of child snatchings is attributable in part, Mr. Chairman, to the lack of uniformity in State criminal laws against parental kidnaping, to the crippled ability of the local law enforcement to pursue a snatcher across State and National boundaries, and to the existence of haven States which either reward a snatching parent with a favorable custody ruling or protect that parent from the rulings of other States. Full responsibility, however, does not lie with the States alone. The courts and the Federal Government, by omissions and commissions, have also contributed to the problem. Here again, my written statement examines in some detail the state of Federal law and policy. I will summarize now to conserve time.

Child custody has traditionally been a matter exclusively within the jurisdiction of the States. To date, the Supreme Court has not interpreted the full faith and credit clause of the Constitution to require States to give full faith and credit recognition to custody decrees entered by a court of another State in an action involving the same parties. The Uniform Child Custody Jurisdiction Act was adopted in response to the chaos in child custody litigation caused in part by these decisions.

In the wake of the infamous Lindbergh kidnaping, the "Lindbergh law" was enacted. Codified as section 1201(a), of title 18, parents are expressly exempt from prosecution under the kidnaping statute. Not only does this remove any Federal disincentive for a parent to snatch a child, but under an agency or accomplice theory, it may also absolve an agent of the parent. For example, the detective who is paid handsomely to engineer the abduction may escape criminal liability even where force, or threat of force, is involved. At a minimum, this statute should be amended so that people who engage in snatchings for profit would be subject to the full force of the law.

Section 1073 of title 18, the so-called "UFAP" statute, which prohibits interstate flight to avoid prosecution of a felony charge, has proven from both a legal and practical standpoint to be ineffective in preventing child snatchings or in returning snatchers to the State whose laws have been violated.

The legal difficulty with respect to the child snatchings stems from limited application of the statute to State felonies. By its terms, the Federal Government is only empowered to return a fugitive who is wanted solely for violating a State felony statute. Since not all States have criminal sanctions against parental abductions, and only some of those that do make it a felony, this provision, if enforced in every case, would provide neither a complete nor uniform solution. In the absence of State criminal law prohibiting child stealing, the statute has no value and provides no deterrence.

Moreover, the statute has been construed by Federal investigative agencies so narrowly as to frustrate its effectiveness even in felony child-snatching cases. Specifically, the FBI further conditions their investigative involvement to cases in which the welfare of the child is

in jeopardy. This interpretation limits their involvement to a mere handful, to some 10 or 15 cases annually, of the total number of cases for which jurisdiction would otherwise lie. Clearly, we in Congress must examine this statute and clarify that it is applicable to State child-snatching laws. Our Federal policies have prolonged, if not promoted, the nightmares of parents whose children have been abducted. Our criminal extradition treaties and extradition policy reflect an insensitivity, almost an indifference to intentional parental kidnapings.

I might say parenthetically, Mr. Chairman, that my first experience with this was from a Wyoming woman whose husband snatched their child to Bogota, Colombia, South America. The case remains as it was when she first brought it to my attention. As a general rule, the Department of Justice denied extradition requests from foreign countries for violations of child-stealing laws and refuses assistance to American citizens and State governments which seek to have individuals extradited from other countries for violations of parental kidnaping laws.

I think it is plainly up to Congress and the President to enunciate a meaningful antiabduction policy which can then be embodied in our treaties. The U.S. passport policy demonstrates an awareness of the problems inherent in international snatchings, but leaves room for improvement. The Office of Passport Services provides limited assistance with regard to the issuance, denial, and revocation of passports in child custody cases. With respect to the revocation of passports, the State Department recently revised its regulations to narrowly limit the circumstances in which a passport will be revoked in a child custody situation. Under the revised regulation, a passport will be revoked if the bearer is subject to a court order stemming from a criminal felony matter. Once again, we must examine the State laws to determine the efficacy of the regulation. Since only some States have characterized parental kidnaping as a felony offense, it is unlikely that many international snatchings will be prevented by the device of passport revocation. Location of abducted children is perhaps the biggest problem facing parents. The Government does not currently offer any aid to "left-behind" parents in finding their snatched children, even though the Office of Child Support Enforcement in the Department of Health, Education, and Welfare provides services of this kind for purposes of locating parents who have defaulted on their child support obligations.

So, often frustrated by our Federal and State laws and policies, it is little wonder that parents, lawyers, judges, and law enforcement officials in overwhelming numbers are turning to the Government for assistance in child-snatching cases. While the traditional role of State law must be preserved in intrastate cases, we at the Federal level have a compelling responsibility to take the necessary and appropriate steps to assist States in resolving the complicated interstate and international cases which they have been unable to adequately address themselves. As well, there is a pressing need to provide some meaningful assistance to parents in locating their children and facilitating the return of the child and abductor-parent to the appropriate State so that decisions affecting access to the child can be made.

The welfare and well-being of innumerable children is at stake. We have a duty to protect them from the traumatizing experience of being snatched and to see to it that they are restored as quickly as possible to a secure and stable home environment. If we in Congress can establish a strong national policy against child-snatching and for a fair adjudication of custody and visitation rights where both fathers and mothers are treated equally, we will have performed an important leadership role. The ultimate winners will be children, parents, and will be society at large.

S. 105 represents a quantum leap from the current hands-off policy of the Federal Government to a constructive approach to child-snatching cases. The bill consists of three interrelated and interdependent sections.

In summary, the first section would require State courts to enforce and not modify, except in specified circumstances, the custody and visitation decree of sister States that have adopted the jurisdictional principles embodied in the Uniform Child Custody Jurisdiction Act and in this bill. This provision will remove one of the incentives parents now have for fleeing to other States in search of a receptive court for either a modification of a preexisting custody decree or to obtain a favorable decree.

The second provision makes available the State and Federal parent locator services which are now being used to locate parents in non-support cases. Assistance of this kind will save countless parents the sometimes bankrupting expenses of hiring private detectives and traveling far and wide across this land in search of their children. Once the child has been located, the parent can make necessary arrangements for the child's return.

The third provision of the bill makes it a Federal misdemeanor for a parent or his or her agent to restrain or conceal a child in violation of a custody or visitation decree entitled to enforcement under the bill. This provision is intended to act as a deterrent to snatchings.

Recognizing that this objective will be frustrated in some cases, S. 105 has been drafted so that the safe and prompt return of the child is of paramount importance, not retribution of the offending parent. Safe and prompt return will lead to dismissal of criminal charges against the parent. The FBI's assistance in investigating these cases will, to a large extent, enable States with criminal statutes to bring enforcement actions under State laws, obviating the need for Federal prosecutions. A section-by-section analysis of the bill follows the conclusion of my statement.

We have been fortunate to have received constructive commentary over the last 2 years on S. 105 and its predecessor proposal which passed the Senate in the 95th Congress as an amendment to S. 1437, but failed to be enacted when the House did not take up the companion criminal code reform bill. Some of the recommended changes were incorporated into S. 105 and its companion measures, H.R. 1290 and H.R. 3654, prior to introduction.

These bills have survived public scrutiny over the last 2 years. Indeed there has been a ground swell of support for their enactment. The number of cosponsors of S. 105 now totals 23, representing a wide array of philosophical and political differences.

In the House Congressman Bennett and Corman are to be credited for introducing H.R. 1290 and H.R. 3654, respectively, which have attracted 56 cosponsors.

In the public sector, the American Bar Association; Parents Without Partners; Children's Rights, Inc.; the New York State Council of Churches, Incorporated; the Washington D.C., Chapter of Fathers United for Equal Rights; John Van de Kamp, district attorney of Los Angeles County, Citizens to Amend Section 1202 of the Criminal Code; Male Parents for Equal Rights; Parents Against Child-Stealing; Parents United to Safeguard Our Homes; Stop Parental Kidnapping, Inc.; the National Federation of Business and Professional Women; the Children's Rights Group; the Lutheran Council in the U.S.A., and many other parents' groups, lawyers, judges, child psychologists, and parents have all expressed their support for the bill.

That is not to say, Mr. Chairman, that the bill cannot be improved. Some of the deficiencies in Federal policy which I addressed earlier in my remarks are in urgent need of correction.

In addition, Professor Bodenheimer, distinguished for her excellence and dedication to children through the improvement of child custody laws, has suggested that the bill be amended to explicitly provide a mechanism to compel a custodial parent to live up to visitation requirements of a custody decree.

I wholeheartedly endorse the professor's suggestion because it will remove one of the existing incentives to snatch a child, that being the frustration of visitation rights. The bill currently defines "custody determination" to include visitation rights. Because of the importance of access for the child to both parents in the normal case, nothing would be lost and everything gained by stating this policy expressly.

I would also recommend the following amendments:

One: Authorizing the FBI to promptly enter any case in which the child is threatened with imminent harm without regard to the 60-day waiting period.

Two: Providing that criminal charges under section 1203 be dismissed if the child is returned unharmed within 30 days after an arrest warrant has been issued instead of treating the return as an affirmative defense to prosecution.

Three: Treating the restraint or concealment of a child outside the United States as a felony for purposes of our extradition treaties.

Four: Authorizing the temporary placement of children in appropriate settings so that proper transportation arrangements can be made.

Five: Expressly authorizing the parental locator services to act on requests from foreign countries.

Six: Direct the National Uniform Crime Report Division of the FBI to conduct a study of the number of child-snatching incidents.

In addition to all the constructive criticism we are likely to receive from this hearing, it would be very useful for Congress to correlate this legislation to the extent possible with the Convention on the Civil Aspects of International Child Abductions currently being prepared by the Special Commission on Child Abduction of The Hague Conference on Private International Law.

The United States is one of 23 countries seeking to devise a convention that will prevent child abductions by putting would-be abductors on notice that their removal of a child to a foreign country, or their wrongful retention of a child abroad, will result in the prompt return of the child by the country of refusal, so as to restore the legal and factual situation that existed before the removal.

The next, and hopefully final drafting meeting will take place in the fall, 1980, after which the conventions will be available for signature.

With that, Mr. Chairman, I will conclude my remarks. I thank you. I would ask unanimous consent at this point that my entire statement be included in the record along with copies of the Uniform Child Custody Jurisdiction Act and a State survey of criminal child-snatching laws.

Senator CRANSTON. Yes.

Senator WALLOP. Thank you.

Senator CRANSTON. Thank you very much. Your entire statement will, of course, go in the record. We appreciate very much your testimony and your interest and your helpfulness. I understand you have to leave at this point but you may return. I hope you can.

Senator WALLOP. I intend to return, if I can, Mr. Chairman. I thank you kindly for hearing me through. Thank you very, very much.

[The prepared statement of Senator Wallop follows:]

PREPARED STATEMENT OF SENATOR MALCOLM WALLOP

My sincere appreciation to my colleagues on the Subcommittee on Criminal Justice and the Subcommittee on Child and Human Development for convening this joint hearing on S. 105, the Parental Kidnapping Prevention Act. It is encouraging to me as the sponsor of this legislation, and to the hundreds of parents and children across this country who have long awaited action on this bill that the two Senate committees so keenly interested in the welfare of children have seen fit to make this legislation their first order of business in the second session of the 96th Congress. I applaud your every effort in helping to design an appropriate Federal response to an increasingly frequent, always heart-rending, occurrence—the removal and/or concealment of a child from one parent by the other parent.

We do not know, we cannot know, exactly how many children are abducted by their parents each year. Estimates range from 25,000 to 100,000, the Library of Congress offering the low projection; a leading national antisnatching group, Children's Rights, Inc., predicting the higher figure. Neither figure is surprising if viewed in light of the annual divorce rate in the United States and the number of children who are affected by divorce. In a recent publication entitled "Divorce, Child Custody and Child Support," the Census Bureau reported a staggering 1.1 million divorces in 1978, and a tripling of the number of children involved in divorce in 2 decades, from 361,000 in 1956 to 1,117,000 in 1976. If the number of divorces and other family disruptions continues at the present rate, it is readily predictable that thousands of children will find themselves pawns in the feud between their parents and may well become victims of child-snatchings. While it is useful for us to develop a reliable data base on the number of child snatchings occurring throughout the country, we ought not dwell on numbers. (For some only numbers are a convincing measurement.) The Hague Conference on Private International Law, currently examining the international problem of child-abductions, observed that the mere number of abductions is less the overriding factor than are the qualitative factors involved; the emotional and psychological detriment to the individuals involved render the quantitative aspects of secondary importance.

The psychic, and sometimes physical harm to the children involved, and to their parents, cannot be underestimated. A child psychologist from Texas told members of the American Bar Association Family Law Davision that child-snatchings induce fear, guilt, and anger in children and have long-lasting, emotionally damaging consequences for the child-victim. Hundreds of parents

have written to me describing the terrible ordeal they have experienced. Consider just one of these poignant letters from a Wyoming woman:

"Dear Senator Wallop: In the most recent issue of 'Family Circle' I read of your current efforts to make 'child-snatching' a Federal crime. I want to thank you and wish you every success.

"I was one of the 'lucky' ones. My ex-husband returned our 18-month-old son. I didn't know a human being could bear such pain and not die."

Not every case has a happy ending. In fact, the vast majority of letters received by members of Congress come from grief-stricken parents who are pleading for help in their still-unresolved cases. Another letter, from a mother in New York, will sound painfully familiar to many of us:

"Dear Senator Wallop: I had been separated from my husband for approximately 14 months. I had custody of our two boys, one who is almost four, and the other who is two and a half. On Thursday, March 8th, my estranged husband took the boys down to Disney World in Orlando, Florida, and was to return them back to me on Sunday, March 11. I have not seen them since. I do not know if I will ever see them again. I'm sure you have heard many hundreds of similar stories. The awarding of custody means nothing to a lawless, determined former spouse.

"I am heartbroken. I never wanted a career, as is so fashionable today. I just wanted to be with my children. He has taken away the only part of my life that ever gave me real happiness. If he hired someone to cripple me for life, it wouldn't be as hard to take as this. But what about my sons? I am so worried. How are they? I may never know. What has my husband told the boys? I am dead? I have abandoned them? I no longer love them? I don't want them? What does the amputation of a parent mean to a child?

"When my husband did not return with the boys, I called the Orlando police. They told me that there was nothing they could do, as my estranged husband was the natural father. It was a family matter in their eyes. The same held true with the police here in New York and the FBI.

"I don't think I have to tell you that childstealing is not a form of marital dispute. It is not a heroic, desperate act of love, as my husband's mother maintains. It is selfish, vicious, vengeful and destructive, with young children ending up as the helpless pawns. Their trust and security are undermined. Childstealing is child abuse. Children need continuity, when they are young, if they are to survive, as adults, in a competitive and sometimes callous world.

"I have been advised by lawyers that the only way I will ever see my children again is to hire a detective and thugs and kidnap them back. This only legal recourse is revolting to me, as I know it must be to anyone with young children.

"As you are the sponsor of bill S. 105, is there any advice or suggestions you could give me? I am heartbroken and worried sick."

An analysis of the hundreds of letters and other communications I have had with child and parent victims of snatchings suggests that the intrastate child-snatching is more readily resolved than is the interstate or international snatching.

In the intrastate case, a parent, for one reason or another almost always related to a marital dispute destined for divorce, will spirit away his or her child to another locale within the same State. In these cases, State and local law enforcement officials and the courts have had reasonable success in locating the disappearing parent and abducted child, and in applying the State laws. Here, issues custody and visitation can be decided and punitive actions taken.

Much more difficult to resolve are the growing number of cases in our highly mobile society in which a parent seizes the child and flees to another State or to a foreign country.

While many States have taken legislative steps to prevent child-snatchings through the enactment of criminal statutes and through the adoption of the Uniform Child Custody Jurisdiction Act, the success rate local officials have in intrastate cases plummets in the case of an interstate or international snatching. The laws and procedures in place in a State to locate missing persons, to prosecute snatching parents and, to a lesser extent, to try custody cases, are frustrated by the removal of the child from within the State's borders.

Why is this so? The heightened public concern about parental abduction is reflected by the number of States that now have antichild-snatching laws. However, State laws are many and varied in their approach to conduct that interferes with rights of custody and visitation. Statutes range in kind from kidnapping to

custodial interference. There are a number of jurisdictions which still recognize parental exceptions in their kidnapping laws and have not enacted a custodial interference statute or which have refused to apply either their kidnapping or custodial interference provisions to parental kidnapping. Courts in some States have shielded parents from kidnapping statutes through statutory construction.

In those States that have enacted criminal statutes, punishment runs the gamut from misdemeanors to felonies. Recognizing the difficulties in successfully extraditing a misdemeanant from another State or foreign country, some States have enacted statutes with bifurcated punishments; interstate or international flight with the child would subject the abductor-parent to a felony charge, while a wholly intrastate offense would be punishable as a misdemeanor. Unfortunately, requests for extradition under these statutes frequently meet with resistance by the requested State. This occurs for a number of reasons, the principle three being that: (1) The requested State does not have a similar statute; (2) the gravity of the offense is not recognized by the requested State on policy grounds; and (3) political considerations unrelated to the specific request often result in a denial. The legal systems and national policies of foreign nation to which the abductor flees invariably complicate, and often emasculate, the ability of a State to enforce its criminal anti-snatching laws.

The child custody laws of the States have improved markedly within the last decade providing greater, but still unsatisfactory deterrence to child-snatchings. In 1968, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Child Custody Jurisdiction Act in response to the jurisdiction problems in interstate custody cases which breed child snatchings. The prefatory note to the Uniform Act explains that the act was written to remedy the intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law:

"Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important which court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future."

To bring a fair measure of interstate stability to custody awards, the Uniform Act limits custody jurisdiction to the State where the child has his home or where there are other significant contacts with the child and his family. It provides for the recognition and enforcement of out-of-State custody decrees in many instances. Jurisdiction to modify decrees of other States is limited by giving a jurisdictional preference to the prior court under certain conditions, thus making substantial inroads into the relitigation problem. Access to a court may be denied to petitioners who have engaged in child-snatching or other similar practices.

Because the Uniform Act is a reciprocal act and may be freely adopted or rejected by the States, its effectiveness in interstate custody cases depends upon its adoption throughout the country. After a comparatively slow start, 39 States have now enacted the Uniform Act and at least one other has adopted the jurisdictional standards of the act. The last remaining States continue to provide a haven to which a parent who snatches the child may flee with expectations of receiving a favorable custody ruling or modifications of an earlier decree without regard to the Uniform Act. For as long as such refuge is available the incentives to snatch the child will remain, as will the ethical bind an attorney is faced with in advising a client how best to gain custody of the child.

The rash of child snatchings is attributable in part to the lack of uniformity in State criminal laws against parental kidnapping, to the crippled ability of local law enforcement to pursue a snatcher across State and national boundries. and to the existence of haven States which either reward a snatching parent with a favorable custody ruling or protect that parent from the rulings of other States. Full responsibility, however, does not lie with the States alone. The courts and the Federal Government, by its omissions and commissions, have also contributed to the problem.

Child custody has traditionally been a matter exclusively within the jurisdiction of the States. To date, the Supreme Court has not interpreted the full

faith and credit clause of the Constitution (article IV, section 1) to require States to give full faith and credit recognition to custody decrees entered by a court of another State in an action involving the same parties. *Halvey* v. *Halvey*, *Kovacs* v. *Brews*, *Ford* v. *Ford*. (The Uniform Child Custody Jurisdiction Act was adopted in response to the chaos in child custody litigations caused in part by these decisions.)

In the wake of the infamous Lindbergh kidnapping case, the "Lindbergh law" was enacted. Codified as section 1201(a) of title 18 of the United States Code, parents are expressly exempt from prosecution under the Federal kidnapping statute. Not only does this remove any Federal disincentive for a parent to snatch a child, but under an agency or accomplice theory, it may also absolve an agent of the parent. For example, the detective who is paid handsomely to engineer the abduction may escape criminal liability even where force or the threat of force is involved. At a minimum, this statute should be amended so that people who engage in snatchings for profit would be subject to the full force of the law.

Section 1073 of title 18, the so-called "UFAP" statute, which prohibits interstate flight to avoid prosecution of a felony charge, has proven from both a legal and practical standpoint to be ineffective in preventing child-snatchings or in returning snatchers to the State whose laws have been violated.

The legal difficulty with respect to the child snatchings stems from limited application of the statute to State felonies. By its terms, the Federal Government is only empowered to return a fugitive who is wanted solely for violating a State felony statute. As discussed previously not all States have criminal sanctions against parental abductions and only some of those that do make it a felony.

In order for the UFAP statute to be operative in a greater number of parental abduction cases, it would have to be amended to apply both to misdemeanor and felony child snatchings. While such modifications would greatly assist States in enforcing their own statutes this would provide neither a complete nor uniform solution; it would only be as pervasive a solution as the number of States with State law on point and in any event would not be a uniform response. In the absence of State criminal law prohibiting child stealing, such an amendment would have no value and would provide no deterrence to the parent in a state without criminal parental kidnapping penalties.

If the statute is not so amended, States should be on notice to amend or enact laws making interstate or international child-snatching felony offenses.

Even if both of these recommended actions were taken, another hurdle would remain. The statute has been construed by Federal investigative agencies so narrowly as to frustrate its effectiveness even in felony child-snatching cases. Specifically, the FBI further conditions their investgative involvement to cases in which the welfare of the child is in jeopardy. This interpretation limits their inolvement to a mere handful (some say 10–15 cases annually), of the total number of cases for which jurisdiction would otherwise lie. Clearly, we in Congress must examine this statute and clarify our intent with regard to child snatchings.

Other Federal polices have prolonged, if not promoted, the nightmares of parents whose children have been abducted. In the international arena, our criminal extradition treaties and extradition policy reflect a national inattention to parental kidnappings. The Department of Justice frowns upon and denies extradition requests from foreign countries for violations of child-stealing laws and refuses assistance to American citizens and State governments which seek to have individuals extradited from other countries for violations of custody laws. The generally understandable policy of the State Department against extraditing persons for domestic relations matter fosters this result. In this instance, I feel the policy is wrong.

The expense involved in fulfilling an extradition request is offered as justification for limiting extraditions to matter in the public, as opposed to the private interest (child snatchings being relegated to the latter category). If cost alone were the rationale underlying the policy, it would seem that the requesting State or a parent would be willing to defray expenses incurred.

There is, however, a far more important reason for this hands-off policy which rests with the Congress and the President. The legislative and executive branches have failed to enunciate any meaningful antiabduction policy.

With respect to extradition requests, the consequences of this policy have precluded the return of a parent wanted on parental kidnapping charges in the

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requesting country even where that offense is specifically enumerated on the schedule of extraditable offenses. The United States will not extradite an offender under those circumstances because the conduct for which extradition is sought is not a felony in this country. This "dual criminality" standard has thwarted many an extradition request. Take for example a case in which the Canadian Government sought extradition of a Canadian citizen living in San Francisco for violation of a kidnapping law. Even though the Canada-United States treaty specifically lists child-snatching as an extraditable offense, the United States refused to extradite on the grounds that there was no comparable felony offense in the United States.

Congress should review its extradition treaties, and either revise this "dual criminality" standard or enact a statute which makes an international snatching a felony offense. An amendment to S. 105 would be needed to accomplish this result.

Before leaving this subject, it must be noted that the State Department has, on occasion, assisted foreign governments who have requested extradition of parents for child-snatching cases, where the health or safety of the child is in danger. Here, and in any extradition case, we owe a duty to provide some means by which the child can be returned promptly if indeed the parent is extradited.

The U.S. passport policy makes some inroads into the problems of international snatchings, but also leaves some room for improvement. The Office of Passport Services provides limited assistance with regard to the issuance, denial, and revocation of passports in child custody cases.

Passports will be denied at the parent's request if the parent presents a copy of a court order awarding him or her custody or an order restraining the removal of the child from the jurisdiction of the country. While applications executed in the United States can be denied on the basis of an order issued by a court of any State, applications executed abroad can be denied only upon presentation of an order issued by a court of the country in which the application is made.

This regulation, which took effect this August, creates a loophole where an application for a passport is made in one of the passport issuing agencies of the United States located abroad. Unless the parent with a valid court order from a State in the United States obtains an equivalent order from a court in the country in which the issuing office is located, the request to deny issuance of the passport will be turned down.

As one Florida attorney pointed out, it is incredible that a passport agency of the U.S. Government although situated abroad will not follow the same rules and regulations of honoring an order of a court of one of our States as must a passprt agency in the United States. The parent in the U.S. is forced to go to court in the foreign country to obtain a valid decree in that country, a time-consuming, expensive, and emotional process. The relevant regulation demands re-evaluation and revision.

With respect to the revocation of passports, the State Department recently revised its regulations to narrowly limit the circumstances in which a passport will be revoked in a child-custody situation. Under the revised regulation, a passport will be revoked if the bearer is subject to a court order stemming from a criminal felony matter.

Once again we must examine the State laws on point. Since only some States have characterized parental kidnapping as felonies, it is unlikely that passports will be revoked in any significant numbers.

Here, too, there are a couple of ways to approach the problem created by the regulation. The State Department can revise the regulation so that any criminal matter, be it a misdemeanor or a felony, would give rise to the revocation of a passport. Alternatively, absent a change in the regulation, States can amend their statutes to gain the full protection of the regulation.

Location of abducted children is perhaps the biggest problem facing parents. The Federal Government does not currently offer any aid to "left-behind" parents in finding their snatched children, even though the Office of Child Support Enforcement in the Department of Health, Education, and Welfare provides such services for purposes of locating parents who have defaulted on their child support obligations.

So often frustrated by our Federal and State laws and policies, it is little wonder that parents, lawyers, judges and, law enforcement officials, in overwhelming numbers are turning to the Federal Government for assistance in child-snatching cases. While the traditional role of State law must be preserved in intrastate cases, we at the Federal level have a compelling responsibility to take the necessary and appropriate steps to assist States in resolving the complicated interstate and inernational cases which they have been unable to adequately address themselves. As well, there is a pressing need to provide some meaningful assistance to parents in locating their children and in facilitating the return of the child and abductor-parent to the appropriate State so that decisions affecting access to the child can be made.

The welfare and well-being of innumerable children is at stake. We have a duty to protect them from the traumatizing experience of being snatched and to see to it that they are restored as quickly as possible to a secure and stable home environment. If we in Congress can establish a strong national policy against child-snatching and for a fair adjudication of custody and visitation rights where both fathers and mothers are treated equally, we will have performed an important leadership role. The ultimate winners will be children, parents, and society at large.

S. 105 represents a quantum leap from the current hands-off policy of the Federal Government to a constructive approach to child-snatching cases. The bill consists of three interrelated and interdependent sections.

In summary, the first section would require State courts to enforce and not modify, except in specified circumstances, the custody and visitation decree of sister States that have adopted the jurisdictional principles embodied in the Uniform Child Custody Jurisdiction Act and in this bill. This provision will remove one of the incentives parents now have for fleeing to other States in search of a receptive court for either a modification of preexisting custody decrees or to obtain a favorable decree.

The second provision makes available the State and Federal Parent Locator Services which are now being used to locate parents who have defaulted on their child support obligations. Assistance of this kind will save countless parents the sometimes bankrupting expenses of hiring private detectives and traveling far and wide in search of their children. Once the child has been located, the parent can make necessary arrangements for the child's return.

The third provision of the bill makes it a Federal misdemeanor for a parent or his or her agent to restrain or conceal a child in violation of a custody or visitation decree entitled to enforcement under the bill. This provision is intended to act as a deterrent to snatchings. Recognizing that this objective will be frustrated in some cases, the bill has been drafted so that the safe and prompt return of the child is of paramount importance, not retribution of the offending parent. Safe and prompt return will lead to dismissal of criminal charges against the parent. The FBI's assistance in investigating these cases will, to a large extent, enable States with criminal statutes to bring enforcement actions under State laws, obviating the need for Federal prosecutions. A section-by-section analysis of the bill follows the conclusion of my statement.

We have been fortunate to have received constructive commentary over the last 2 years on S. 105 and its predecessor proposal which passed the Senate in the 95th Congress as an amendment to S. 1437, but which failed enactment when the House did not take up the companion criminal code reform bill. Some of the recommended changes were incorporated into S. 105 and its companion measures, H.R. 1290 and H.R. 3654, prior to introduction.

Not only have these bills survived public scrutiny over the last 2 years, also there has indeed been a groundswell of support for their enactment. The number of Senate cosponsors of S. 105 now totals 23, representing a wide array of philosophical and political differences. In the House, Congressman Bennett and Corman are to be credited for introducing H.R. 1290 and H.R. 3654, respectively, which have attracted 56 cosponsors. In the public sector, the American Bar Association, Parents Without Partners, Children's Rights, Inc. (CRI), the New York State Council of Churches, Inc., the Washington D.C. Chapter of Fathers United for Equal Rights, John Van de Kamp, District Attorney of Los Angeles County, Citizens to Amend Section 1202 of the Criminal Code, Male Parents for Equal Rights, Parents Against Child-Stealing, Parents to Safeguard Our Homes, Stop Parental Kidnapping, Inc., the National Federation of Business and Professional Women, the Children's Rights Group, the Lutheran Council in the U.S.A. and many other parents' groups, lawyers, judges, child psychologists and parents have all expressed their support for the bill.

That is not to say that the bill cannot be improved. Some of the deficiencies in Federal policy which I addressed earlier in my remarks are in urgent need of correction. Professor Bodenheimer, distinguished for her excellence and dedication to children through the improvement of child custody laws, has suggested the bill be amended to explicitly provide a mechanism to compel a custodial parent to live up to visitation requirements of a custody decree. I wholeheartedly endorse the professor's suggestion because it will remove one of the existing incentives to snatch a child, that being the frustration of visitation rights. (The bill currently defines "custody determination" to include visitation rights. Because of the importance of access for the child to both parents in the normal case, nothing would be lost and everything gained by stating this policy expressly.)

In addition, I would recommend amendments:

One: Authorizing the FBI to promptly enter any case in which the child is threatened with imminent harm without regard to the 60-day waiting period;

Two: Providing that criminal charges under section 1203 be dismissed if the child is returned unharmed within 30 days after an arrest warrant has been issued instead of treating the return as an affirmative defense to prosecution;

Three: Treating the restraint or concealment of a child outside the United States as a felony for purposes of our extradition treaties;

Four: Authorizing the temporary placement of children in appropriate settings so that proper transportation arrangements can be made;

Five: Expressly authorizing the parental locator services to act on requests from foreign countries; and

Six: Direct the National Uniform Crime Report division of the FBI to conduct a study of the number of child-snatching incidents.

In addition to all the constructive criticism we are likely to receive from this hearing, it would be very useful for Congress to correlate this legislation to the extent possible with the Convention on the Civil Aspects of International Child Abductions currently being prepared by the Special Commission on Child Abduction of the Hague Conference on Private International Law.

The United States is one of 23 countries seeking to devise a convention that will prevent child abductions by putting the would-be abductors on notice that their removal of a child to a foreign country, or their wrongful retention of a child abroad, will result in the prompt return of the child by the country of refusal, so as to restore the legal and factual situation that existed before the removal. The next, and hopefully final drafting meeting will take place in fall, 1980, after which the conventions will be available for signature.

With that, I will conclude my remarks. I would ask unanimous consent at this point that my entire statement be included in the record along with copies of the Uniform Child Custody Jurisdiction Act and a state survey of criminal child-snatching laws.

[Additional material referred to above can be found in the appendix.]

Senator CRANSTON. Thank you. We will now hear from Congressman Charles E. Bennett, who is an outstanding leader on the House side on this issue.

STATEMENT OF CONGRESSMAN BENNETT

Senator CRANSTON. Congressman Bennett, I appreciate very much your presence here this morning.

Representative BENNETT. Thank you very much, Mr. Chairman, and the committee. I want to thank you for this opportunity to testify before your subcommittee on S. 105, child-snatching legislation introduced by Senator Wallop. He has done an excellent job.

As you know, I have introduced companion legislation in the House, H.R. 1290, with 55 cosponsors, and I was the first Member of Congress to introduce child-snatching legislation back in 1973. Child snatching is generally defined as concealing or restraining a child by one of its parents in violation of a custody decree or visitation rights of the other parent. Since child snatching is not now a Federal crime, the Justice

Department does not compile statistics on how often this problem occurs. However, from estimates I have seen and from the mail I have received on the subject, I have every indication that child snatching is reaching epidemic proportions.

I am sure that there are few, if any, Members of Congress today who have not been contacted by a desperate constituent about child snatching. Unfortunately, there is little a Congressman can do to help in these situations because child snatching is not now a Federal crime. Since Federal kidnaping statutes specifically exclude all parents from their jurisdiction, victimized parents usually cannot gain Federal help in locating their children.

The problem of child snatching was first brought to my attention by a constituent whose children had been abducted by her ex-husband in violation of a State court order. I would like to take a moment to chronicle the experiences of this woman to dramatize the frustration and hearbreak that accompany child snatching.

I will refer to the woman as Mrs. Smith. In the mid-1960's, Mrs. Smith divorced her husband and was granted custody of her three children by a Florida court. In April 1968, when the children were visiting their father in California, he covertly took them and moved to Colorado. Since child snatching is not a Federal crime, the FBI refused to enter the case. In 1969, Mrs. Smith located her children and got them back, but only after going to Colorado to file for custody in that State. Her ex-husband was granted visiting rights. In June 1970, the children were visiting their father in Colorado when he took them again and moved covertly to Washington State. The children were returned to their mother in November 1971, but only after another exhausting legal battle.

But the story does not end there. On November 13, 1972, the father flew to Jacksonville, went to the children's school, took them and flew them to Seattle. Again, it was necessary for Mrs. Smith to locate her ex-husband and her children, go to that locale and fight to regain the custody of her children. Believe it or not, Mrs. Smith is actually one of the lucky ones. Many victimized parents are never able to locate their children and never see them again.

It is ridiculous and improper for a parent to have to wage a separate custody battle in State after State because the other parent steals the children and moves to another State. It is tragic when the victimized parent cannot locate the abducted children and may never see them again. In most cases I know of, the emotional strain has been compounded by the problem of finances.

First: It is costly to locate missing children. Private investigators do not come cheap. And once the children are located, the parent may have to travel to that locale and fight for custody in that State's courts. And yet, it is not the parent who suffer most in child snatching cases; it is the children.

Most psychiatrists will tell you that after an emotional upheaval such as a divorce in the family, a child must have a stable and secure environment if he or she is to mature properly. However, the victim of a child snatching is often yanked from a stable environment and thrust into a whole new situation at a very delicate time in his or her development. Such a traumatic experience can cause irreparable damage to a child's emotional stability.

In order to combat the growing problem of child snatching, I authored legislation in the 93d Congress to make child snatching a Federal crime, thereby providing FBI help to victimized parents in locating their children. That bill would simply have removed the parental exemption clause from the Federal kidnaping statute.

In 1974, the House Judiciary Crime Subcommittee held hearings on my bill but no further action was taken. I reintroduced the bill in the 94th Congress with one modification. I added a provision setting a ceiling for the penalty: A fine of not more than $1,000 or imprisonment for not more than 1 year, or both for the crime of child snatching. No action was taken on the 94th Congress bill or an identical bill introduced in the 95th Congress.

The Senate passed a Criminal Code Reform Bill in January 1978, which contained a child-snatching amendment authored by Senator Wallop. When the House Subcommittee on Criminal justice held hearings on this bill, I testified in favor of the Wallop child-snatching amendment. However, the bill failed to be reported out of the subcommittee and died.

Senator Wallop and I both introduced child-snatching legislation at the beginning of the 96th Congress, S. 105, and my companion bill in the House, H.R. 1290, encompass the main points of the previous Wallop amendment.

As you know, S. 105, as well as H.R. 1290, have three main thrusts:

First: The bill creates a new section to the United States Code entitled: "Full Faith and Credit given to child custody determinations."

This section requires States to enforce and not to modify custody and visitation orders of other States made consistently with a set of criteria from the Uniform Child Custody Jurisdiction Act. By providing for full faith and credit for other States custody determinations, this section removes the motivation to snatch a child in order to shop for a favorable custody determination in another State.

The second part of the bill authorizes the use of the Parent Locator Service in the Department of Health, Education, and Welfare to locate parents who abduct their children in violation of the custody or visitation rights of the other parent. This section of the proposal provides an effective search mechanism and further reduces the need for FBI intervention. Third. The bill sets criminal penalties for child snatching by creating a section in the United States Code entitled "Parental Kidnaping." This section makes it a crime to conceal a child for more than 7 days in violation of a parent's right of custody or visitation or to restrain a child without good cause for more than 30 days. The former offense is punishable as a class B misdemeanor, not more than 6 months, nor more than $10,000, or both, and the latter offense is punishable as a class C misdemeanor, not more than 30 days, not more than $10,000, or both.

This section also provides that the FBI "may not commence an investigation of an offense under this section unless 60 days have elapsed after both (*a*), a report is filed with local law enforcement authorities; and (*b*), a request for assistance of the State parent locator service is made." This language seems to overcome the concern of the FBI that a Federal child-snatching law would pull it into countless domestic disputes.

Finally: This section provides that it is a defense to a prosecution that a parent did not report a child snatching within 90 days, or that the abducted child was returned unharmed within 30 days of the issuance of an arrest warrant for the offending parent.

I think S. 105 provides an effective interlocking framework for reducing the incidence of child snatching, helping victimized parents locate their children, and minimizing the involvement of the FBI to only those cases that really require the help of that agency. I strongly urge the subcommittee to support S. 105.

Thank you, sir.

Senator CRANSTON. Thank you very, very much. I appreciate greatly your testimony and your helpfulness today.

We will now hear from Congressman Duncan.

STATEMENT OF CONGRESSMAN DUNCAN

Senator CRANSTON. Congressman Robert Duncan, we welcome you very much to this hearing.

Representative DUNCAN. Senator, I thank you and the committee for your courtesy in hearing me. I would like to say that I am one of the cosponsors of Congressman Bennett's bill. I readily acknowledge his leadership in this field.

I want to thank you for the opportunity to testify today on S. 105. The Federal Government is characterized by the dynamic but ultimately equal relationship of its parts, Federal and State, judicial and legislaive, public and private. In our Republic, dynamic equilibrium is the key. We must constantly change to meet the exigencies of the times, yet constantly maintain a balance among all the parts, letting none outweigh the other.

The proposal we consider today is a paradigm of the problem of maintaining a Federal balance. We face the question of how we reconcile all of the interests involved, maintain balance among the parties and sectors and protect a child caught between crushing forces he cannot possibly tolerate unprotected.

We must ask the question of how Congress—once we have decided that Congress is the proper forum in which to address this problem and that itself is a thorny question—should protect the integrity and privacy of the family unit, the best interests of the child, insure interstate comity and promote judicial efficiency, stability, and finality.

This legislation seeks to redress a problem which has grown more visible, if not more severe, over the last few years. Estimates vary between 25,000 and 100,000 cases of child snatching annually. There are no statistics of the trauma and suffering involved. There are few judicial, social, or legislative precedents to guide us.

A few weeks ago, the House passed a bill, which the Senate will soon consider, aiding States and localities in dealing with the problems of domestic violence. While I actively supported that bill, as I do this measure, I also carry misgivings about both. Taking a child across a State line in violation of a court custody decree has recently risen to high scoal visibility. It, like domestic violence, has been with us for many years, but because of changing social mores and relations, has only recently come to national attention.

As a small-town lawyer, handling a variety of cases, I have been trying to deal wtih this problem for a long time. In my years in the Oregon legislature, I labored on this issue, at that time seeking to do so by an interstate compact. The further I explored each solution, the more I became convinced that while answering some questions, new ones were inevitably created.

It is a complex and delicate question of conflict of laws. What court should have jurisdiction? Should the Federal Government involve itself in a situation in which a parent is punished for moving his own child without harm, across a State line? How far should Government go into social policy? Should Government intervene in a private marital problem? When does it become a public problem? Should the FBI be injected into it at the expense perhaps of its other functions? Should we break with a statutory exemption explicitly included in both the Lindbergh Act of 1932 and its 1934 amendment exempting parents from the definition of "kidnaping"? Are we truly protecting the best interest of the child by tearing him away from a parent with whom he may have lived for several years because that parent violated a State court decree? What are the best interests of a child?

Now these are difficult questions. I have been involved as a lawyer, representing both snatchers and snatchees. I think we ought to realize that in each case my client believed right and justice and the best interests of the child were on their side. I have even been peripherally involved in a case of this sort that ended up in Jonestown in Guyana. And, of course, the answer to that problem was clear. Initially, it was much more clouded.

I have long believed that social problems should be handled at the lowest appropriate level of government. Though I would prefer to have this question addressed at the State level, it has not been. For this to happen would require all 50 States to subscribe to the interstate compact, both in letter and spirit, and make it impossible for any parent to find a safe haven to harbor a child taken contrary to a court order across a State line. I don't believe we can except this level of cooperation. In one sense, we have an interstate compact already called the Constitution of the United States. We have an interstate compact commission called the Congress of the United States, and we can handle this problem here.

We must not fear to use the Federal Government at an appropriate level when necessary. Requiring full faith and credit be given to an extant State court decree before the Federal law swings into effect, saves this measure from Federal imbalance in a State problem. By reserving the Federal role to the creation of a Federal Parent Locator Service and FBI investigation after a sufficient lapse of time, we hold Federal interference to the minimum. At the same time, we must be careful not to compound the problems that already exist. Traps may be and probably inadvertently are built into this bill.

In that connection, I would like to suggest that your staff might want to look at page 5, in line 5, and consider striking the word "any," and replacing it with the words, "the first." Similarly, on page 8, in line 5, add the word "first," between the word "has" at the end of 5, and "made," at the start of line 6.

Now I am not sure that we can solve all these problems. Only Solomon completely succeeded in settling a custody dispute between two

mothers. We have neither the vision, the wisdom of Solomon, nor have we the inclination to enact any such dramatic and drastic solution. But our fear of failure must not deter our effort to succeed. With this bill, I believe we have a means by which to maintain the dynamic Federal equilibrium without severe intrusion or imbalance at any level.

I thank you for letting me express my views to you.

Senator CRANSTON. Thank you very much. We appreciate your interest, your testimony, and look forward to working with you on this. Thank you very much.

Mr. DUNCAN. Thank you.

Senator CRANSTON. We will now proceed to our first panel. We will break it up into two parts, calling first the representatives of the administration, Paul Michel, Deputy Attorney General, Department of Justice Lee Colwell, Executive Assistant Director, FBI; Louis B. Hays, Deputy Director, Office of Child Support Enforcement, Department of HEW; Larry Lippe, Criminal Division, Department of Justice; and W. D. Gow, FBI, section chief.

PANEL OF LAW ENFORCEMENT OFFICIALS:

STATEMENTS OF PAUL R. MICHEL, ACTING DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; LARRY LIPPE, DOJ; LEE COLWELL, EXECUTIVE ASSISTANT DIRECTOR, FBI; W. D. GOW, FBI; AND LOUIS B. HAYS, DEPUTY DIRECTOR, OFFICE OF CHILD SUPPORT ENFORCEMENT, HEW

Senator CRANSTON. We welcome you and appreciate your presence. You may proceed in whatever order you choose among yourselves.

Mr. MICHEL. Good morning, Mr. Chairman. I am Paul Michel. I am the Acting Deputy Attorney General. Not that it is important, but the witness list inadvertently promoted me to being the permanent Deputy Attorney General. As the chairman knows, the nomination of Judge Charles Renfrew is before the Judiciary Committee now. He will shortly, I trust, become the Deputy Attorney General.

On my right is Mr. Lee Colwell, who is Executive Assistant Director of the FBI. Mr. Colwell's responsibilities particularly include the Criminal Investigative Division, which is the portion of the FBI that would be affected by the bill before the committee.

To my far left is Mr. Larry Lippe of the Criminal Division of the Department of Justice, who has studied the problems related to criminalizing child snatching at the Federal level and may be of assistance to the committee, particularly with regard to specific problems that would confront prosecutors and questions which the committee may have.

If I might, just as a brief overview, Mr. Chairman, I would like to note that I have a prepared statement. I would ask that it be incorporated into the record.

Senator CRANSTON. It will be inserted into the record at the conclusion of the panel's oral presentation.

Mr. MICHEL. Thank you.

I would prefer not to read it in the interest of economy of time on the part of the committee.

Let me simply say that the Justice Department has the same concern that everyone in this room has for the welfare of children. The problem is obviously a real problem. We do not in any way question that.

Second, the FBI and the prosecutors in the Justice Department will, of course, follow the will of Congress and fully and faithfully execute its decisions whatever they may be.

Third, I would like to suggest that historically the problem of child snatching has been addressed primarily at the State level. The issue essentially before the committee is in what way and how much the Federal Government seeks to augment and strengthen the total efforts addressed at the problem.

The bill, of course, seeks to do it in essentially two different ways: first, civilly, and second, criminally.

It seems to me that the civil provisions, both making nationwide the uniform act, to have all States honor proper custody decrees and visitation rulings, are entirely appropriate.

We have done a study of its constitutionality and have determined that under the commerce clause, it would be constitutionally permissible. Therefore, we fully support this provision of the bill.

With regard to the expanded duties of the Federal Locator Service as provided for in this bill, of course, Mr. Hays, on my left, is, if you will, the best witness. All that I would like to say with regard to the expansion of the locator service's authority and mission would be that, from what we know, it seems like it might have great promise and great utility and that it might be a very good additional solution to the problem.

I would like to say that its exact utility is difficult, I think, for anyone to estimate. It may be that Congress would want to have a trial period under an expanded mission for the locator service, and then, after that trial period, and based on the results of it, to look at the issue of Federal criminalization.

The Justice Department is strongly opposed to the Congress at this time enacting criminal statutes along the lines suggested in the bill. The more detailed reasons, of course, are in my statement, but they essentially boil down, Mr. Chairman, to three considerations.

The first is essentially that by the nature of the criminal justice process and by the training and capacity of prosecutors and investigators, we are concerned that we may not be in a very good position to be of appropriate, useful assistance. We are not trained in psychology, sociology, domestic relations disputes or family law. We are trained and experienced at collecting evidence of serious criminal violations and prosecuting people in the Federal system ordinarily with the intent and purpose of having them incarcerated in order to deter others and to safeguard society from threats which are perceived to be threats to the entire society, as opposed to primarily private matters between individual members of society. So, there is a real question whether we are trained and equipped to really make a great contribution to this problem.

Second, there is a danger, in my view, that our involvement might even be counterproductive and make the problem worse. Certainly, as you, Mr. Chairman, and Senator Mathias before you highlighted, the primary focus for everyone, including we prosecutors and investigators, has to be on the best sense of the welfare of the child himself. The dangers are not insubstantial if we have investigative involvement by the FBI.

First, there is the danger of confrontations and possible violence which could, in certain circumstances, constitute a real danger to the child himself. Even if the danger does not ripen, it seems to me that it is undesirable to have a child confronted with the circumstances where the parent who has custody, in fact, is arrested, possibly, in his sight, searched, and hauled off by FBI agents.

Second, the investigative process, of course, is aimed primarily at collecting evidence. In circumstances like these the evidence collection would be through interrogation of knowledgable witnesses who would almost unavoidably include both parents and the child himself or herself. Again, the prospect of the parent and the child being interrogated by FBI agents does not seem in keeping with the intent of everyone in this room and their concern for the welfare of the child.

Third, there is the further prospect, when we get to the prosecutive stage of again the parent and again the child being questioned by prosecutors in the pretrail preparation phase and the further prospect still less seemly and attractive of a child being a witness in a criminal prosecution in the Federal court.

The third problem from the perspective of the Justice Department with regard to criminalizing this offense, and as I say, the civil Federal involvement seems entirely appropriate and useful and worth a try. But just limiting the attention to making it a criminal offense, the third problem is that it would create an enormous diversion of very scarce and precious resources.

Of course, the criminal justice system has basically four key players, the investigator, the prosecutor, the judge and the jailer. All of these resources are stretched very tightly, as you know, Mr. Chairman, on matters which the Attorney General has made top Federal priority: foreign counterintelligence, organized crime, white-collar crime and governmental corruption.

We are now in a circumstance where the FBI through enormous reorganization, retraining, and focus is involved and productively involved in a series of present and contemplated undercover operations of enormous potential and importance, is involved in very difficult white-collar crime investigations of various kinds. GSA fraud is but one example. Those kinds of investigations, as you know, are enormously time consuming of the precious and limited resources we have. Indeed, the resources are not only limited, but over recent years have been shrinking. There are fewer FBI agents today than there were 3 or 4 years ago.

So, when at a time when we have fewer FBI agents and more difficult and time-consuming work, we are concerned that an additional 5,000 or 10,000 cases or whatever it would be, and to my knowledge, there is no good estimate of the number of investigations the FBI would be pushed into were S. 105 to be enacted as it is currently drafted. But, in any event, and in short, there is a substantial danger of resources being diverted.

It seems to me that, if I can make a final point, that the problem of child snatching is not one, but several problems or many problems.

Where the circumstances basically involves parents who are both seeking custody or enforcement of custody or visitation rights and there is no circumstance of basic criminality or acute physical danger, that is one matter and that is a circumstance where the FBI and the prosecutors and the rest of the criminal justice apparatus, in my opinion, ought not to be drawn into it. However, where there is criminality, where there are State criminal violations, particularly where they are State felonies and where, in addition, there is clear danger to the safety of the child, the FBI, and the rest of the criminal justice, the Federal apparatus, can become involved and do become involved. That is possible under existing laws and in no way would be assisted by the passage of the criminal portion of this bill.

Finally, it was observed by some of the earlier witnesses that the involvement of the FBI was sought to be limited by the 60-day lagtime before they would become involved. I might say that there is also perspective of the courts and the prosecutors. Our anticipation is that there would be very few cases actually brought to trial in the Federal criminal courts for violation of this criminal offense if it is enacted. The question has to be asked, if there are few if any prosecutions, how much deterrence is there by making it a Federal crime. It is also a little bit anomalous, I think, to have a Federal crime which can be wiped away by an act after the commission of the crime.

The inclusion of the absolute defense of returning the child almost supports the inference that one might draw reading the bill, that it is not intended as a vehicle for prosecution or for sentencing and that the main hope is to have the benefit at the investigative stage and not the prosecutive stage of the great effectiveness of the FBI.

And then we come to whether the timelag provision focuses and limits that involvement sufficiently. It seems to me that where there is a clear and present danger, if you will, the current circumstance, under the unlawful flight to avoid the prosecution act, which, under our current policies is triggered only where there is danger, I think, is an adequate vehicle for FBI involvement in those relatively small number of cases where aid is acutely needed.

I think that, in sum, with the uncertainly of the benefits of making it a Federal crime, that possibly it would actually be counterproductive to the best interest, particularly from a psychological standpoint, of the child and, perhaps, also the parents.

Third, with the unknown and unascertainable but troubling diversion of limited resources, particularly of the FBI, that Congress should give the civil provisions of this bill, and whatever form they might finally be enacted, a chance to work before deciding the issue instead of in addition to making it a Federal crime.

Mr. Chairman, that is the sum of my informal remarks. Perhaps, rather than go into the details of specific prosecutorial problems, you might hear from Mr. Colwell, with his perspective as a manager of FBI resources and then, Mr. Hays, and then perhaps questions.

Thank you very much.

Senator CRANSTON. Fine. Thank you very much.

Mr. MICHEL. Thank you, Senator.

Senator CRANSTON. Thank you. We will now turn to Mr. Colwell. Mr. Colwell.

Mr. COLWELL. Thank you, Mr. Chairman. I have a brief statement. With your permission, I would like to read it.

Senator CRANSTON. Yes.

Mr. COLWELL. I appreciate this opportunity to discuss with you, the FBI's views on the proposed Parental Kidnaping Prevention Act. We in the FBI are pleased to provide you with whatever assistance we can in developing the appropriate response to what we all agree is a significant problem. Before addressing specific aspects of the legislation or legislative proposal, I would like to outline briefly the Bureau's current involvement in parental kidnaping cases.

Where State legislatures have enacted felony custody violation statutes and local authorities request our assistance, the Federal Unlawful Flight Act, title 18, United States Code, section 1073, provides a mechanism for FBI entry into interstate parental kidnaping cases. Reflecting the congressional intent expressed by the parental exception in the Federal Kidnaping Act, title 18, United States Code, section 1201(a), the Bureau enters these cases only when the child is in physical danger and authorization has been obtained from the Department of Justice.

I realize these procedures are limited to a relatively small number of cases and I share your concern over the current, chaotic situation in which child custody can be litigated again and again, and in which parents with custody rights are left to their own devices in attempting to locate their absconding ex-spouses and their children. The hard work of many able people in developing this legislation is evident.

Section 3, of the bill, which requires States to give full faith and credit to custody decrees of other States can be expected to greatly improve the current situation or forum of shopping and multiple litigation of child custody.

Section 4 expands the authority of the Parent Locator Service which has the proven ability to locate parents who are delinquent in their child support payments. The bill would empower the Parent Locator Service to conduct extensive record searches for the parent who violates a custody decree, thus, providing a most valuable service to the lawful custodial parent.

The concern which I share with you over the current situation leads me to support section 3 of the bill. I urge, however, that you ascertain the effect that passage of sections 3 and 4 will have on the present problem before establishing Federal criminal sanctions in this field. This proposal would involve the Federal Government's law enforcement apparatus in domestic relationships before it is made clear that the problem will not be substantially remedied by the civil measures proposed in this bill, together with whatever criminal sanctions State legislatures choose to establish. All possible alternatives should be explored thoroughly before resorting to Federal criminalization.

In addition, criminalization may increase the potential for violent confrontation and emotional trauma, if not physical danger to the child. We believe the threat of arrest is more likely to produce violent and perhaps armed resistance than is a civil recovery proceeding. Even where no resistance occurs, a sign of a mother or a father being handcuffed, frisked, and led away by a number of FBI agents may cause additional or further severe and lasting emotional trauma to the child.

Another concern with regard to the criminalization portion of this legislation is the fact that it makes criminality depend upon issues which are the subject of civil litigation. It would force Federal courts sitting in criminal cases to decide issues which may at the same time be in litigation in a State court.

In resolving the question of guilt under this statute, a Federal court is required to litigate in criminal proceedings whether the custody order alleged to have been violated is entitled to enforcement under section 1738(a), of title 28, United States Code.

Since the legislation requires deference by one State court to another State court only when the original determination of custody is made in a manner consistent with the provisions of 1738(a), it can reasonably be expected that in a number of cases litigation raising that issue among others will be commenced in a second State. Civil proceedings may provide a more appropriate forum for this determination than do criminal proceedings. Further, Federal criminal litigation of this issue represents an inefficient use of precious judicial resources particularly in light of the existing expertise which State courts have in family law. Finally, such procedures may result in precisely the multiple litigation of custody issues that this bill seeks to avoid with children being subjected to the traumatic experience of testifying against their parents in both civil and criminal proceedings.

Of more direct concern to Federal law enforcement is that, in determining whether a predicate exists for a Federal investigation under the bill as written, investigators and prosecutors may be called upon to determine such issues as whether jurisdictional requirements were met in the preceding civil actions, whether the child is "restrained" within the meaning of the statute, whether the custody order is entitled to enforcement under section 1738(a) of title 28; whether the child is concealed or restrained without good cause within the meaning of the statute; whether reasonable notice and opportunity to be heard was given to the alleged violator of the original custody order; and whether because of mistreatment or abuse or threats of mistreatment or abuse, an emergency existed which justified a court in taking jurisdiction. These are matters best determined by a court in an adversary forum, preferably in civil proceedings, but certainly not by Federal law enforcement officials.

Another criminalization issue which should be faced squarely is the cost of enforcement. An FBI investigator is an expensive resource. If Congress determines that parental kidnaping and denial of visitation ought to be Federal crimes and the FBI ought to be the agency to investigate these crimes, then a substantial number of additional agents will be needed to handle these misdemeanor violations. Given the disparate estimates of such occurrences, the precise number of additional agent work-years is difficult to calculate. However, if for instance, the American Bar Association estimate of 100,000 cases per annum is reasonably accurate, then even assuming optimistically that 95 percent of the cases will be deterred or resolved by civil proceedings or by the Parent Locator Service, the FBI would be faced with 5,000 kidnaping cases each year. Presumably the easier cases will have been resolved leaving the FBI with the 5,000 most difficult cases.

Our experience in fugitive-type investigations leads us to expect that approximately 160 additional agents would be needed to investi-

gate 5,000 parental kidnaping matters. Additional supervisory personnel, support personnel, would also be needed, and of course, additional operating expenses would be incurred for both visitation denial and parental kidnaping cases.

In discussing the issue of FBI resources, perhaps it would be helpful to explain briefly the FBI's quality case concept. Factors, including the increasing capabilities of local and State law enforcement have led to a withdrawal of FBI investigative activity in traditional areas such as bank robberies, property crimes and fugitive investigations. FBI efforts have been focused on cases with high prosecutive potential, cases requiring greater investigative sophistication and cases having a greater impact on the community at large such as foreign counterintelligence, organized crime and financial crime. This policy has been encouraged by both Congress and the Department of Justice. We question whether it is perhaps anomalous for the FBI to withdraw from investigations of bank robberies and escaped Federal prisoners and at the same time assume responsibility for a misdemeanor involving essentially a family relations problem.

In conclusion, we recognize the existence of a serious problem which we hope and expect will be substantially alleviated with the full faith and credit portion of this legislation. We will continue to provide whatever assistance we can in these matters with or without this legislation. The services of the FBI will remain available to local authorities through utilization of the Unlawful Flight Statute in appropriate cases; through the services of the FBI laboratory, the Identification Division, and the National Crime Information Center computer network, and through training afforded to local law enforcement officers in the field and at the FBI Academy. We will enforce to the best of our ability, consistent with our other investigative demands and available resources, whatever laws are enacted.

In consideration of the above problems of criminalization we encourage you to give the civil portion of the bill an opportunity to impact upon parental kidnaping, and we encourage you to explore the feasibility of other civil measures before interjecting the Federal criminal law enforcement apparatus into these situations.

Thank you for this opportunity to be heard. I will be glad to respond to any questions, at the appropriate time.

Senator CRANSTON. Thank you very, very much.

Mr. COLWELL. Thank you, sir.

Mr. MICHEL. Mr. Chairman, if I might interject. I neglected to introduce Mr. Douglas Gow, a section chief, in the Criminal Investigative Division of the FBI who is on my far right.

I also would like to thank the committee——

Senator CRANSTON. What is his last name?

Mr. MICHEL. Gow. G-o-w, Senator.

Senator CRANSTON. Thank you.

Mr. MICHEL. I would also like to express our appreciation for the committee agreeing to take us early among this very large cast of witnesses so that Mr. Colwell and I, and the rest can return to our duties.

Finally, Mr. Chairman, if you would, I would like to have Mr. Lippe summarize some of the key problems just succinctly from the prose-

cutor's standpoint that are posed by the criminal provisions of the bill.

Senator CRANSTON. Fine.

Mr. LIPPE. Thank you, Mr. Chairman.

I am Lawrence Lippe, and I am chief of the Criminal Division, general litigation and legal advice section. I appreciate the opportunity to further describe the investigative and prosecutive problems which are created by S. 105 and its companion bill in the House.

The provision in S. 105 which establishes an absolute defense to prosecution if the abducting parent returns the child unharmed requires agents to have the wisdom of Solomon. Suppose an agent, armed with a valid arrest warrant locates the abducting parents under circumstances indicating that the parent is returning the child, thereby establishing an absolute defense to prosecution. Should the agent arrest the parent, thus bringing to bear the entire criminal process of fingerprinting, setting of bond, and the like or should he simply hold the warrant and do nothing? What if the parent then changes his mind and flees again?

By the same token, one can imagine how difficult it would be for a U.S. attorney to prosecute successfully a parent who returns the child on the 31st day, but be forced to decline to prosecute the parent who returns the child on the 29th day.

Second, proposed section 1203(a), provides that it is an offense to conceal or restrain the child without good cause. That requirement can be expected to present a very real dilemma for a U.S. attorney's office and the FBI when faced with a request to begin an investigation.

Suppose a parent reports that a child was snatched because of a disagreement between the two separated parents over proper medical treatment or education or religious upbringing of the child. Is the FBI supposed to become involved in weighing conflicting points of view or opinions in these areas in which they have absolutely no training? Also, as anyone familiar with the child-snatching problem is aware, the abducting parent will likely claim that he snatched the child precisely because of the behavior patterns, lifestyle, or living arrangements of the custodial parent which the abducting parent considered detrimental to the child. Thus, the element of without good cause can be expected to be vigorously litigated in most prosecutions. One can imagine the unattractiveness of airing the dirty linen of a divorced couple's life in a criminal trial as the parent on trial tries to show that the custodial parent was such an evil person that the taking was for a good cause.

Finally, an element of the offense that must be proved is that the child is concealed or restrained in violation of a custody right entitled to enforcement under proposed section 1738(a) of title 28. This requires a preliminary investigation by the FBI into the facts and circumstances surrounding the issuance of the custody decree, as well as a legal determination as to whether the custody right is entitled to enforcement before a full investigation can be begun.

If the parent is found, the same factors have to be considered when deciding whether to prosecute. These legal issues may be exceedingly complex, and, indeed, may be the subject of litigation in one or more State civil courts at the very time when the FBI is faced with

a request to investigate and the U.S. attorney is considering prosecution. Therefore, Mr. Chairman, I respectfully submit that in an effort to establish a criminal approach or solution to this problem which is essentially a domestic relations dispute, and in an apparent effort to not stigmatize parents as criminals, the bill instead creates for us an investigative and prosecutorial nightmare.

I thank you Mr. Chairman for the opportunity to present these views.

Senator CRANSTON. Thank you very much.

I would like to go to Mr. Hays of HEW, but I want to ask one question that I am particularly interested in getting your response to. Unfortunately, I am going to have to leave shortly to go to the White House where Senator Mathias now is. He will be back shortly and resume the hearing if we have to recess very briefly.

In your testimony, you argue against Federal criminalization of parental kidnaping and suggest that the threat of arrest is likely to produce violence and perhaps armed resistance and raise other problems as well. Yet, a number of States, including my own State of California, have adopted State felony statutes in this area. Is there any evidence in States which have adopted State criminal provisions that criminalization will lead to the adverse results you suggest in your testimony?

Mr. MICHEL. Mr. Chairman, I don't know specifically of the experience of any particular State, including California, under this. The point in the testimony was based on the concerns and experience of the FBI in the contrast between the kind of fugitive circumstances that they have normally operated in historically, versus the kind that we anticipate would arise in some cases if this bill were enacted. But it is a speculative matter. I don't know in terms of past State experience precisely what it has been.

Senator CRANSTON. You don't have any evidence based upon the State statutes or experience?

Mr. MICHEL. No, sir.

Senator CRANSTON. In your testimony you suggested an arrest by a Federal law enforcement officer would be traumatizing to those concerned. Is there any basis for assuming that an arrest by a Federal officer is more traumatizing than an arrest by a State law enforcement officer?

Mr. MICHEL. Mr. Chairman, I think our answer would have to be essentially the same. We have not studied the experience of individual States, and therefore, really can't respond as to what it has been. Again, our concern is that at least in some circumstances, we would anticipate that problem arising were the Federal investigators to become involved.

Senator CRANSTON. It has been argued, particularly by district attorneys in States which have adopted State criminal statutes, that these State laws are not effective as deterrents because they don't have interstate reach and they therefore say that a Federal criminal statute is needed to deter interstate flight. Would you agree that the interstate nature of parental kidnaping weakens the effectiveness of State criminal statutes in this area?

Mr. MICHEL. I would suppose that it does, Mr. Chairman, although again, I have no specific knowledge of any studies that would sup-

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port the view; though it sounds entirely logical that the deterrent effect of State criminal statutes is reduced where the circumstances cross State lines. What I think is the even more difficult question is what added deterrent impact there would be by simply enacting a Federal criminal statute, particularly one that might be prosecuted very seldom.

Senator CRANSTON. I am going to go to Mr. Hays now. I know your problems, but I wish you could wait for further questions I believe Senator Mathias wishes to ask you.

Mr. MICHEL. Certainly, Senator.

Senator CRANSTON. Thank you very much.

Mr. Hays, could you now proceed?

Mr. HAYS. Thank you, Mr. Chairman.

I appreciate the opportunity to be here today to provide the administration's views on S. 105's impact on the Department of Health, Education, and Welfare.

The bill would authorize the Office of Child Support Enforcement, the Federal Parent Locator Service, to locate individuals who have taken children in violation of a court order that granted custody of the children to another individual. This authority would operate if the violation involved taking the children across a State or U.S. boundary and within the special maritime and territorial jurisdiction or the special aircraft jurisdiction of the United States. It would also operate if the child is a foreign official, an internationally protected person or an official guest. The administration is supportive of measures to deter parental kidnaping, but we do object to making the Federal Parent Locator Service available to locate the children who have been taken in violation of the custody decree.

The Federal Parent Locator Service records are obtained, as described later in my testimony, from tax filings and social security records. To extend the use of tax return information where no substantial Federal interest has yet been demonstrated would be inconsistent with congressional and administration policies to protect most strictly privacy of taxpayers and information supplied in their returns. We are also concerned by the bill's potential for diffusing the mission of the child support agencies. To adequately describe these misgivings, I would like to take a moment to discuss the child support enforcement program and the principles upon which it is based. The program is a Federal-State effort to locate absent parents, to establish paternity of the children and to insure that absent parents provide support payments for their children. This effort is essentially focused on collecting child support to reimburse welfare expenditures, reducing the welfare caseload, and keeping marginally indigent families off the welfare rolls. The program is succeeding. One of the major reasons for its success is the single goal, collection of support, apparent to all of those participating in its administration.

We believe that requiring child support agencies, many of which are already insufficiently staffed for optimum productivity, to assume additional responsibilities and caseload would disrupt the administration of the child support program and prevent it from reaching its full potential.

If the subcommittees should pursue the use of the Federal Parent Locator Service, however, we would make the following recommendations. Assistance from the State child support agencies should be confined to using the State parent locator service to refer requests for address information to the Federal Parent Locator Service in the same manner that they currently submit requests in child support cases. The use of the State parent locator services should be limited solely to local low enforcement officials. Under such a provision local law enforcement officials, after having received a report of a parental kidnaping would be the coordinators of the search effort and would use all resources available to them, including a request to the State parent locator service.

This approach would allow the officials who are attempting to deal with the violations of State custody laws to access the State parent locator service instead of putting the burden on the parent who may not have the information or ability to use the system.

We would also point out that the bill does not create a duty on the part of the State agencies operating State parent locator services to accept location requests in parental kidnaping cases. Neither does it authorize States to charge fees for costs incurred in accepting and processing these requests or in searching records for a child or the individual who took the child in violation of a child custody order.

Further, consideration should be given to financing the costs that would be incurred if the Federal Parent Locator Service is made available. The main sources of home and employer addresses available to the Federal Parent Locator Service are the records of the Social Security Administration and the Internal Revenue Service. Both of these agencies now have annual reporting requirements. Social security expects to complete reporting changes of addresses contained in the Employer's Wage Report covering 1978, by April, 1980. The Internal Revenue Service records are updated by the September following the April personal income tax filing deadline of each year.

An immediate request to the Federal Parent Locator Service for location of a recently kidnaped child or the individual believed to have taken the child therefore might prove unfruitful.

No reliable data on the number of incidents of parental kidnaping are available. Information from the Congressional Research Service and the American Bar Association indicate a possible range of 25,000 to 100,000 a year, but of course, no accurate figure can be projected for unreported incidents.

The foregoing comments are technical in nature and should not be construed as detracting from our opposition to the proposed expansion of the function of the Federal parent locator service.

Thank you, Mr. Chairman.

Senator CRANSTON. Thank you very much.

We are going to have to declare a temporary recess. I have some written questions that I will submit to you, due to my inability to do them orally now.

We will reconvene as soon as Senator Mathias returns. I appreciate your tolerance and patience. Thank you very much.

Mr. HAYS. Thank you, sir.

Mr. MICHEL. Thank you.

[A short recess was taken.]

Senator WALLOP [acting chairman, presiding]. The hearing will come to order.

I am standing in for other colleagues. I guess I am an honorary member of this committee inasmuch as I am something of an alumnus. I hope you gentlemen will bear with me as we go along.

The first questions I have, are directed to the Department of Health. What is it now, social welfare?

Mr. HAYS. We are still HEW for another month or so.

Senator WALLOP. Whatever you now are. [Laughter.]

I know what you used to be. Regarding the parent locator service, as I understand it, your position is that it is all right to utilize certain confidential records for the purpose of locating a parent to obtain child support payments, but that the administration opposes using those same records to locate missing human beings; namely, the children. Would you explain that apparent inconsistency?

Mr. HAYS. Well, Mr. Chairman, as you know, the Congress determined in late 1974 that there should be a Federal child support enforcement program and that certain Federal records would be available for the purpose solely of locating those absent parents for the purpose of collecting child support. That was in spite of other privacy considerations reflected in the Federal Privacy Act.

While I am basically here, Mr. Chairman, to testify on the technical aspects of the Federal parent locator service, there is an overriding concern in the administration about the further extension of the use of Federal tax information.

Senator WALLOP. Are we to understand then that it is the position of the administration that when it comes to money you can invade the citizen's privacy, but when it comes to human lives and welfare of children we cannot?

Is that a fair characterization of where we are?

Mr. HAYS. Well, Mr. Chairman, I think that as I indicated earlier in my testimony that the Department and the administration support the general concept of attempting to deter parental kidnaping and resolve that problem——

Senator WALLOP. So long as we don't do anything specific about it? Maintain the vacuum, in other words.

Forgive me. I am not after you personally, but I find it difficult to reconcile the Treasury Department's views—that it is a good deal to go after money, despite the privacy concerns, but that those same privacy considerations are paramount when it comes to the future of this country; namely, its children.

Mr. HAYS. I would suggest, Mr. Chairman, that perhaps there has not been the same opportunity to review the Federal interests in the problem of child snatching as was given to the problem of child support enforcement that resulted in the Federal legislation, the Social Security Act.

Senator WALLOP. Well, let's see if we can't flesh this out a little bit. Is the Federal parent locator service presently available to assist a parent who has lost physical custody of a child through a child stealing incident for the purpose of enforcing an outstanding child support obligation?

Mr. HAYS. It is conceivable that the Federal parent locator service could be used to attempt to locate an absent parent for collecting child support in a case that also might involve a child snatching incident,

but only if it was pursuant to a child support action, an attempt to collect support would——

Senator WALLOP. Yes. The answer to my question is yes.

Mr. HAYS. Indirectly that could be the result, yes.

Senator WALLOP. California presently authorizes the use of its State parent locator service to assist in finding abducted children. Are you aware of any other States, if any, that allow similar usage?

Mr. HAYS. No, I am not.

Senator WALLOP. Does the Department have a position on the use of State parent locator services for this purpose?

Mr. HAYS. Any such use would not be pursuant to the approved State plans under the Social Security Act or the child support program. Any costs incurred——

Senator WALLOP. So you are in opposition to the California position then.

Mr. HAYS. I don't believe it is a question of opposition. It is a question of whether or not it is legally part of the child support program. We would not reimburse any costs that they incurred under the normal IV–D, 75 percent matching rate, and it would raise a serious compliance question as to whether or not they were in fact operating properly under their approved State plan under the Social Security Act.

Senator WALLOP. You would not approve a State plan in the future that used a State parent locator service for such purposes; is that what you are saying?

Mr. HAYS. We would not approve the State plan that so provided for the use of its parent locator service.

Senator WALLOP. Can you supply to the committee a list of the States that do use their locator services to locate snatched children?

Mr. HAYS. We are unaware of any other State that uses it for that purpose. We can do a further review and report back to this committee, but we are currently unaware of any other use.

Senator WALLOP. The committee would appreciate it if you would do that.

[Mr. Hays' response to Senator Wallop's request follows:]

Senator WALLOP. Can you supply to the committee a list of the States that do use their locator services to locate snatched children?

Mr. HAYS. OCSE has conducted a review of all State parent locator service (PLS) operations and can confirm that California is the only State that is currently using their State PLS to locate children who have been abducted.

This activity is not a part of the California Child Support Enforcement program under title IV–D of the Social Security Act. Therefore, California neither requests nor receives Federal financial participation for that portion of the State's PLS activities.

California's PLS is a statutorily created component of the California Department of Justice and has specific statutory authority to locate parents and abducted children in child snatching cases as well as absent parents for the purpose of enforcing child support obligations. Currently, location in child snatching cases is limited to children taken in violation of visitation or custody orders of California courts.

In conducting a search for an abducted child, the California PLS uses State locate sources only. They do not refer these cases to the Federal PLS, which is statutorily restricted to locating absent parents for the purpose of enforcing support obligations.

Senator WALLOP [continuing]. Some of the witnesses who will be testifying this morning will be talking about the problem of child stealing in terms of the emotional and psychological harm done to those children.

Are you aware of any attention to this aspect of the problem within the Department, either through the Administration on Children, Youth and Families or the National Child Abuse Center and ACYF?

Mr. HAYS. I am not personally ware, Mr. Chairman. In the scope of my responsibilties, I would not normally be aware of such activity within the Department.

Senator WALLOP. Under the preliminary draft of the international treaty dealing with parental kidnaping which the United States has participated in and preparing at the Hague Conference, each country would be required to designate a central authority to serve as a clearinghouse and to take steps to locate children upon requests from other nations.

If this treaty is ratified by the United States, it would obviously assist many Americans in obtaining the return of their children from foreign countries, but it would also impose upon the Government a reciprocal obligation to assist in locating children from other countries who have been brought to this country.

Now, in light of the Department's position, do you have any ideas as to where in the United States or how the United States might fulfill its responsibilities under such a treaty other than through the parent locator service?

Mr. HAYS. Well, first, Mr. Chairman, I would indicate that I do not believe that the administration has had a real opportunity to consider whether the same privacy concerns which I raised in my testimony concerning cases arising from within this country and involving private individuals would also apply to cases coming to us from foreign governments under any proposed international treaty.

That issue aside, the issue of privacy aside, it would appear on the surface that technically the Federal parent locator service would be at least one alternative way of serving as that kind of a register.

Senator WALLOP. Is the parent locator service presently authorized to respond to requests from abroad or would specific legislation be required for this to occur?

Mr. HAYS. Some change in legislation would I believe be required to allow the Federal parent locator service to respond directly to requests coming in.

Senator WALLOP. What happens to inquiries coming from abroad now?

Mr. HAYS. Inquiries that come from individuals or agencies outside of the Nation have to be funneled through State child support agencies. There is no vehicle, no provision under current law to allow them to come directly to the Federal parent locator service for address information.

Senator WALLOP. What would you suggest that our future course be for processing requests from abroad?

Mr. HAYS. Well——

Senator WALLOP. Speaking not for the administration, but for yourself now.

Mr. HAYS. Well, from——

Senator WALLOP. Permit me to interrupt just long enough to express any frustration with the administration's position. Apparently it is the administration's position to pay lipservice and clutch its heart strings and appear noble on the childsnatching problem and then to do nothing about it.

I mean, we are going to have to find some way to deal with child stealings. And to say there hasn't been time simply isn't so. This has been an issue for several years, at least. The predecessor proposal to S. 105 was passed by the Senate once, in the last Congress. This bill has been pending for over a year.

How much time does it take to take care of 100,000 lives a year?

Mr. HAYS. Mr. Chairman, is your question directed to the S. 105 or to the international?

Senator WALLOP. Well, let's address the international child-stealing cases. What can we do?

Mr. HAYS. Technically, Mr. Chairman, the Federal parent locator service could provide some information to requesting international agency or foreign government. However, I should point out that even if that were the case, the Federal parent locator service is by no means a perfect address-finding process, and in fact, in the majority of the cases involving child support actually the successful locator normally is done at the State or local level because of the fact that much of the address information that we have access to through the Federal parent locator service——

Senator WALLOP. How do they do it at the State and local level if you haven't approved plans for the State parent locator service which would provide that service?

Who do they go to?

Mr. HAYS. In child support cases, Mr. Chairman, the State and local child support agencies do much of the locate——

Senator WALLOP. I understand about the child support cases, but my hypothetical question is based on the request of a parent from abroad about a snatched child.

Mr. HAYS. Well——

Senator WALLOP. And you say technically that——

Mr. HAYS. I am merely pointing out, Mr. Chairman, that while the FPLS technically could do it, it would not be a panacea. It would not result in a tremendously high rate of successful locates.

Senator WALLOP. I realize it is not a panacea in every case for locating parents on the support arrangements either but it is a starting point. It has worked better than anything else that we have done. It has filled a vacuum.

It has been suggested that the Federal parent locator service alone should process location requests in child-snatching cases. Assuming that the opposition to such legislation were dropped, what would be the practical effects of utilizing only the Federal service without the use of the State parent locator services in child-snatching cases?

Mr. HAYS. The practical effect would be relatively minimal disruption of our current operations, and based on the results that we see in the child support cases we could predict that perhaps in 50 percent or so of the cases we would come up with either a home address or an employer's address for the person that we were looking for.

Senator WALLOP. How many States have computerized search facilities or semicomputerized search facilities?

Mr. HAYS. Approximately 80 percent of the States have either fully or partially automated State parent locator services. About 45 of the 54 States and jurisdictions use a computer terminal, an automated method for communicating with the Federal parent locator service.

Senator WALLOP. Would the Department be more inclined to support the provision if the States were specifically directed not to do the actual field investigations?

Mr. HAYS. Well, one of our concerns from the technical standpoint, Mr. Chairman, has been the impact of a greatly expanded responsibility at the State and local level for matters other than child support. So that would certainly alleviate our concerns in that regard.

Senator WALLOP. If we are going to do some thing about child snatching obviously some entity is going to be given a new, or expanded responsibility. Is it the position of the administration that has boasted about its ability to coordinate Government that we establish a new agency, another bureaucracy to get the job done?

Mr. HAYS. I certainly don't think that is the position of the administration.

Senator WALLOP. Well, either we are going to do it and something is going to expand or we are going to ignore it and leave the vacuum. Is there any other way?

Mr. HAYS. Well, again, looking at the technical aspects and putting to one side our privacy concerns, we would feel that if the States were to use their automated locate procedures in which they get information from their various State record sources such as motor vehicles, unemployment insurance agencies and the like, that that technically would result in a relatively high degree of success. It would not provide much of a burden to the States; we do not think that would hurt the child support program.

So, that is a possible technical solution to the problem, again, putting to one side the privacy concerns for the moment.

Senator WALLOP. You have recommended that if this is done that a fee be charged for the use of the service. Is this done in support cases?

Mr. HAYS. In the child support cases there is only one situation in which a fee is charged. That is the situation in which the individual who is not receiving public assistance requests only the services of the Federal parent locator service as opposed to the other range of services that are offered under the program. In that situation, the individual is charged a fee of $5 for using the Federal parent locator service.

Senator WALLOP. Would that be the same amount that you would recommend for child-snatching cases if that were to be the case?

Mr. HAYS. For those costs incurred at the Federal level, yes, that would probably be sufficient to cover any additional Federal costs.

Senator WALLOP. If the States had the option rather than the duty to receive and process requests in child-snatching cases, would you guess that all 50 States would agree to do it?

Mr. HAYS. I really would hesitate to predict how many. I really would have no way of knowing.

Senator WALLOP. If they all agreed to process location requests in snatching cases how long would it take for the necessary agreements to be entered into?

Mr. HAYS. If such were to be enacted into law, I think it could be done very quickly, perhaps a matter of 3 months.

Senator WALLOP. Would it be administratively easier and less disruptive to the Federal parent locator service to make it mandatory for the States to process child-snatching requests?

Mr. HAYS. Well, I don't think that whether it were mandatory or optional that it would have any difference one way or the other.

Senator WALLOP. Well, I am talking about the effect on the Federal service.

Mr. HAYS. Only in the sense that the volume would be presumably lower, but since that is primarily an automated system, volume really doesn't have too much effect on the Federal parent locator service.

Senator WALLOP. Have you contemplated or anticipated the cost of expanding the Federal service to cover snatching cases?

Mr. HAYS. It is very difficult to do that, Mr Chairman, because of the difficulty in estimating the number of child snatching cases. If we were to assume perhaps 30,000 cases in a 1-year period of time then the cost at the Federal level solely for the use of the Federal parent locator service might be in the neighborhod of an additional $200,000 in 1 year.

Senator WALLOP. In terms of the rest of the money we spend around here, that is pretty cheap to take care of 30,000 lives; isn't it? I would not say that was extravagant on the Federal level.

Well, I would like to sum up, Mr. Chairman, and turn the chair back to you and remain, if I may.

I am genuinely troubled by the administration's position on S. 105. To view their comments on the parent locator service and on the criminal provision together, what we have is the administration offering no advice with regard to the admittedly difficult and frequent problem of locating absconding parents.

It appears to be the administration's view that the Federal Government has no role to play with regard to the investigative problems, despite the admitted inability of States and local authorities to deal with interstate snatchers.

I guess the question, the last question would be, how would the full faith and credit provision deal with the case of the unlocated parent in the absence of any attempt by the administration to resolve the location problem.

Mr. HAYS. I am afraid I wouldn't be able to answer that question, Mr. Chairman. Perhaps the Department of Justice could.

Senator WALLOP. I was afraid that is what you would say. I have to come to the conclusion that lip service is not enough in this instance. I am sorry to have to say that to you, but I am extremely disappointed in the administration with all their high-flown phrases of human rights and everything else that they can't look inward for $200,000 and take care of the problem at home.

Thank you, Mr. Chairman.

Senator MATHIAS [acting chairman, presiding]. Thank you, Mr. Chairman.

We are very grateful to you.

Senator WALLOP. I yield my hat back.

Senator MATHIAS. Senator Cranston and I are both very apologetic for having been interrupted today, but circumstances arose that we couldn't control. We were playing what we used to call in the Navy, "Hot Sacks." As he came in this morning to the hearing room, I had to leave. I came out of the Cabinet room, he went into the Cabinet room. So, we were trading back and forth.

I do have some questions for Mr. Michel. I am wondering if you can tell us in what circumstances at the present time the FBI will involve itself in child abductions?

Mr. MICHEL. Senator, the answer is that where there is a State felony violation and some indication of danger, review is made both by the U.S. attorney's office in the particular location, say your own State of Maryland, and a further review by Criminal Division attorneys within the Department of Justice.

The review, of course, is to lead to a decision of whether or not a so-called UFAP warrant should issue.

In making the determination, the Criminal Division construes the concepts of danger quite liberally in one respect, and perhaps narrowly in another. It is construed broadly or liberally in the sense that we don't limit it to danger in terms of imminent physical injury from say beatings but also other things such as medical attention and other things that run to the general welfare of the child.

It is construed narrowly in the sense that we require that there be some reliable indication or evidence that the danger is real. We do that because in nearly every case the parent who is in effect a complainant in the underlying State offense is claiming that there is some danger to the child. We have to be able to sort out those claimed cases from ones where there is some indication that that threat is real. Where it is, we act. We approve warrants on a regular basis, although the numbers are limited.

Senator MATHIAS. Is this as a result of custom or do you have some written guidelines to deal with each case?

Mr. MICHEL. I don't know precisely the extent to which the policies are in writing. I am sure there are some writings that reflect the policies, but how comprehensively they do so, I can't say.

What we have done, though, in order to assure maximum possible uniformity, we have a centralized group of specialists who treat these matters regardless of what part of the country they come from or what the particular circumstances are.

So, we have the advantage over and above the utility of written guidelines of having attorneys with expertise and broad experience in these cases. I think they are reviewed with great care and that the decisions are rational and sensible and supportable.

Senator MATHIAS. I wonder if you could check whether or not there are written guidelines, and if possible, I think the committee would appreciate completing the record by having a copy of them.

Mr. MICHEL. I will do so.

[Material referred above can be found in the appendix.]

Senator MATHIAS. Could you tell us how many requests for this kind of assistance have been made in the last 5 years?

Mr. MICHEL. Well, I am told that it runs somewhere in the neighborhood of 10 to 20 per year that come to the attention of the criminal division in Washington.

Now, a larger and unknown and difficult to determine number are brought to the attention of the U.S. attorney, but he only forwards to Washington for further consultation and review those cases that are close cases and ones that clearly don't meet the policy or the legal requirement are not even forwarded. So the larger, total national number I can't tell you. We don't have the figure.

Senator MATHIAS. When a case is forwarded to Washington, to headquarters, who in the Department is involved in making the determination that the Department or the FBI is going to be involved?

Mr. MICHEL. Attorneys in a section of the Criminal Division which we previously called, and you may know it by the name "General Crimes section." Some of them are in the room this morning, Senator.

Senator MATHIAS. Do you know how many of the States have enacted statutes creating a statutory felony for child snatching?

Mr. MICHEL. I do not, Senator. I might say though, I am told that the experience of the attorneys who handle these matters is that while parental kidnaping per se is not necessarily a felony in a particular State, that frequently there are other criminal laws of more general nature which can apply and that those frequently are felonies. I am told that there is no experience within the knowledge of these attorneys in Washington where there was danger and there was a true snatching case where there couldn't be a consideration of a UFAP warrant for want of an underlying State felony.

Senator MATHIAS. I have just one final question for anyone on the panel. To give us a more human side of this, how long is it after an alleged snatching does the FBI usually get involved? Is it after a period of long frustration and anxiety or does it happen right away?

Mr. MICHEL. I understand, Senator, from the attorneys who handle these things that it varies enormously. The triggering event, of course, is the State's felony warrant or complaint. That, of course, is something that from the standpoint of time is entirely up to the aggrieved parent.

So, it is perfectly conceivable that a State warrant could be obtained right after the abduction and our processing of UFAP reviews is very speedy and we have cases recently where the decision has been made within a day or two and the warrant issued.

So, it can range from within a few days of the abduction to much later. The principal factor causing delay is any hesitation on the part of the aggrieved parent to first go to the State authorities. But once that step is taken we can and do move rapidly.

Senator MATHIAS. I am wondering if the panel will stay in place. We have been joined by the distinguished Senator from Minnesota, Mr. Durenberger. He wishes to make a statement. Senator Wallop has some further questions for the panel and I have one or two.

Senator Durenberger?

STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. I wish to could remain with you and the panel, Mr. Chairman, but I am chairing an oversight hearing of your

Governmental Affairs Committee. We recessed so I can share some of my observations on the importance of S. 105. There are an awful lot of people within and without the Senate that deserve special commendation for the work that they have put in on this critical bill.

I particularly want to commend Senators Wallop and Cranston for initiating the legislation, and you, Mr. Chairman, for your efforts in organizing this morning's hearing. It is a privilege for me to join such distinguished Senators in cosponsoring S. 105. In addition, I think it is very appropriate to express my personal gratitude to Pat Hoff, of Senator Wallop's staff, for her personal commitment to advancing this bill throughout the last few years.

Although many of the bills we consider receive more publicity than this, few will have as much direct impact on the lives of the people that we represent. Childnaping—the illegal abduction of a child by the noncustodial parent—has reached epidemic proportions over the past two decades.

At least 25,000 cases are reported each year. Experts in child welfare believe there are three unreported cases for each abduction brought to the attention of the authorities.

During my first year in the Senate, a number of Minnesota families who suffered the loss of a child sought my assistance in one form or another. I can't fashion language sufficient to convey the magnitude of the emotional and the financial tragedy inflicted on these people. I have met parents who have neither seen nor heard from their children for several years, parents who don't know the whereabouts of a child or whether the child is alive or dead. I have met a little girl who was kidnaped and then recovered. But she bears the scars of that experience and of spending her childhood in a home for emotionally disturbed children. I have met families that have abandoned their careers, exhausted their financial resources in a futile effort to relocate one kidnaped child. I have spoken with countless families who are not yet victims, but who live every moment with the fear that society's judgement on the custody of their child may be muted by an act of forcible abduction.

This morning, several parent victims are before this committee and they can speak to the tragedy of childnaping with a knowledge that I can't share, but having been involved in the effort to assist Minnesota victims, I want to make two important points regarding the nature of the legal remedies needed to curb this ongoing breach of human dignity.

First, Mr. Chairman, the committee should recognize that the forcible abduction of a human being across State lines is a national problem, one that requires a national, not a State solution. As the committee well knows, the crux of the problem lies in the fact that custody decrees do not fall within the full faith and credit clause of the U.S. Constitution. To resolve that problem the Commissioners on Uniform State Laws have promulgated a uniform act on the reciprocal enforcement of custodial and visitation decrees. It is an excellent law, but while 39 States have adopted it, Mr. Chairman, 11 have not. Those States have tended to become a sanctuary for kidnaped children.

At some point the uniform law may be adopted by all 50 States, but then again, it may not. In the interim period there will be thousands

and perhaps hundreds of thousands of additional victims. There is a legitimate national concern and interest in insuring that the custody of a human child is determined by a court of law and not by the force and guile of a kidnaper.

S. 105 would insure that custody and visitation decrees would be enforcible in every State and this is an essential requirement if we are to remain a society of laws rather than of men. Unfortunately, Mr. Chairman, extraterritorial validity is only part of the solution. Unless this committee also creates realistic mechanisms to enforce custodial decrees it will have little impact on the child-napping problem.

Today a custodial order is little more than a right without a remedy even in those States that have adopted the uniform law. Because childnapping is not a crime, victim parents cannot enlist the assistance of Federal law enforcement officials in locating and claiming victim children.

Instead, they must rely on private attorneys and private detectives and their ability to enforce the basic right of custody is entirely a function of their own personal financial resources.

The parents that I have met over the past 12 months have invested sums ranging from a minimum of $9,000 to a maximum of $40,000 in the frequently unsuccessful effort to recover their kidnaped children. This is a terrible price even for those who can raise the money. For those who cannot, the rights conferred by decrees of custody are meaningless.

Mr. Chairman, there are few rights more basic than the right to the custody of a child. We cannot tolerate a system that makes that right contingent on personal wealth. S. 105 contains two mechanisms to remedy that inequity and I hope the committee will give serious considerations to both.

First, it makes the services of the Federal parent locator service available to any parent seeking to locate a victim child. The FPLS has been used effectively in locating parents who default on child support decrees. To deny its use if a child is kidnaped doesn't make any sense. Broadening access to the service can minimize the need to incur massive legal and investigation fees in locating a missing child.

Second, the bill makes it a Federal misdemeanor to conceal or abduct a child in violation of a custody order. This enables the FBI to assist in locating and returning a kidnaped child, a service for which there is no charge an one that is equally available to all citizens regardless of their personal wealth.

It also provides a significant deterrent against commission of the abduction itself. One of the principal weaknesses of the present system is its utter lack of sanctions against the parent who abducts a child.

Even in some States that have adopted the uniform act, the worst fate that can befall a lawbreaking parent is a court order requiring him or her to return the child. If anything, this is an incentive to attempt abduction. At worst, the noncustodial parent will have the same situation they occupied before the abduction attempt, lack of custody. Many victim parents see this lack of sanctions as a prime reason behind the rapid increase in childnaping that has taken place over the past 10 years.

The penalties provided by S. 105 are moderate, but nevertheless important. By helping to deter the act itself, they can prevent the child from incurring emotional scars that even recovery can never fully dispel. I certainly appreciate the reticence of the FBI to acquire any additional law enforcement responsibilities. By any criteria the Bureau is already badly understaffed, but the alternative is to leave enforcement of custody rights to the parents themselves if they can afford the cost.

Under present law, a parent whose automobile is stolen can enlist the help of the FBI, but if the parent's child is abducted, law enforcement agencies are powerless to help. This is a strange set of priorities and it must be reversed. If this requires the FBI to retain additional manpower, then Congress must provide the funds. A right as fundamental as the custody of one's child cannot be left without legally effective enforcement mechanisms.

I also understand the reticence of the FBI to become involved in quasi-family matters where feelings are high and violence is not infrequent, but this is precisely the reason why recovery of a kidnaped child should be entrusted to law enforcement officials and not private agents or volunteers.

Mr. Chairman, we should not lose sight of the fact that this is the International Year of the Child. I can think of no better way to honor the child than through rapid enaction of the bill now before this committee. The price of delay is being measured in shattered dreams, emotional scars and broken childhoods. That is simply too high a price for delay.

I thank you very much for the opportunity to be able to make this statement here today.

Thank you.

Senator MATHIAS. Thank you very much.

Senator WALLOP. I too want to thank you, Senator, for your remarks. I have some questions for the FBI.

Mr. Colwell, I would like to ask you about the UFAP statute. It is my understanding that the statute is intended to assist in returning alleged felons to States for prosecution of State law violations. Is that generalization correct?

Mr. COLWELL. That's correct.

Senator WALLOP. As a general rule, does the Federal Government bring prosecutions under this statute, or has it been used primarily so that the States can prosecute the underlying State offense?

Mr. COLWELL. I believe the intent of the legislation was to return the individual charged with the State felony to that State for prosecution by State authorities and not, except in unusual circumstances, prosecution at the Federal level.

Senator WALLOP. Let me ask you this. If the Federal laws do not have a criminal statute equivalent to the State statute for which the State seeks return of the fugitive, will the UFAP statute be applied?

Mr. COLWELL. I am sorry, Senator.

Senator WALLOP. If the Federal laws do not have an equivalent criminal statute to the State statute for which the State seeks return of a fugitive, will the UFAP statute apply?

Mr. COLWELL. Senator, I am sorry. I don't understand the question.

Senator WALLOP. If there isn't a Federal equivalent of the State felony statute for which the State seeks return of a fugitive, will the UFAP law apply?

Mr. COLWELL. If there is a Federal law equivalent to the State law that has been violated?

Senator WALLOP. If there is not a Federal law equivalent to the State law will the UFAP statute apply?

Mr. COLWELL. Yes, if it is a felony in that State.

Senator WALLOP. In that State it will.

Are there any exceptions to that?

Mr. COLWELL. No exceptions I am aware of. The requisite is that it be a felony in the State that requests assistance.

Senator WALLOP. It is true, isn't it, that the UFAP statute does not by its terms exclude State parental kidnaping felonies?

Mr. COLWELL. Where the State violation or infraction is classified as a felony, in and of itself, I don't know that it would exclude that. We are governed by a Department of Justice policy which I believe reflects the intent of the kidnaping law which specifically excluded the family relationship.

Senator WALLOP. But the statute does not, by its own terms, exclude parental kidnaping felonies?

Mr. MICHEL. It does not.

Senator WALLOP. Isn't it true, then, that the Department has read an exception into the UFAP statute in child-snatching cases; namely, by excluding all cases except where they determine there is danger?

Mr. MICHEL. I think the answer is "no," Senator. No. 1, the consideration of avoiding, except in circumstances of danger, Federal involvement even under the UFAP statute is our best good faith attempt to apply the congressional judgment under the Lindbergh statute, excluding from Federal involvement——

Senator WALLOP. But you just told me that there are no exceptions, that there need not be a Federal equivalent to the State criminal statute for which a UFAP warrant is sought?

Mr. MICHEL. That's correct.

Senator WALLOP. Yet you do make exceptions on your own policy grounds in these cases. This is contrary to your earlier statements that there are no exceptions, that if it is a felony in a State, or if there is any other applicable felony in a State, the statute applies.

Mr. MICHEL. That is correct.

Senator WALLOP. Let me see if I can summarize what's been said. If there is a felony in a State, the UFAP statute does not apply unless under your judgment, which is a Department interpretation that has been laid on, danger is involved.

Mr. MICHEL. The statute does apply. Whether as a matter of discretion a warrant is issued, has heretofore been a policy judgment. It is true we have not issued warrants in every case that we could have within the terms of the statute.

Senator WALLOP. Doesn't your policy effectively frustrate State law and policy, contrary to the purpose of the Federal statute?

Mr. COLWELL. Senator, if I may, I think we have bypassed a couple of important points that are considered by the State in requesting the unlawful flight warrant at the Federal level.

One: They have to agree in writing to extradite the individual. There is an intent to prosecute the individual who has fled the State.

Senator WALLOP. If the State does that, will you?

Mr. COLWELL. Do what?

Senator WALLOP. If the State does that, will you issue a UFAP warrant?

Mr. COLWELL. The States, if they do that, then that is when we present the matter to review if it comes to the FBI, rather than the U.S. attorney. Most of the time it goes to the U.S. attorney directly from the local prosecutor. Then, it is presented to the U.S. attorney's office, to the Department for review, because it does involve a parental kidnaping matter.

Senator WALLOP. It seems there is an inconsistency there. Are you telling me that if the State indicates its intention to prosecute and to extradite, then you drop the danger standard and issue a UFAP warrant?

Mr. MICHEL. No, Senator. It is required that the States agree. The fact that they do does not by itself make it automatic that the warrant will issue. It is still a discretionary judgment under the kind of policy circumstances that——

Senator WALLOP. There are exceptions indeed, in this instance, at least.

Mr. MICHEL. Not in the statute, but the practice does not go to the full limit of what the statute would support.

Senator WALLOP. In what other cases are there such exemptions?

Mr. MICHEL. In virtually every criminal statute that the FBI investigates or the Justice Department prosecutes, we decline to act because of reasons of resources, de minimus offenses, and so forth, even in circumstances where the law is broad enough to allow us to act. We do it every day with regard to nearly every statute we have. We would have to have 100,000 FBI agents instead of 8,000, were we to prosecute and investigate in each and every case.

Senator WALLOP. In answer to my earlier question, you stated that you do not prosecute UFAP violations. You return the fugitives to the State for the State to prosecute them. Where does it all get mixed up?

Mr. MICHEL. Senator, my point is that most criminal statutes are not applied to each and every circumstance that would fit their terms, so that it is not only UFAP where we apply it less frequently then it could at its maximum be applied. That is the norm with regard to the full range of criminal offenses that we are responsible for.

Senator WALLOP. Are there any other statutes in which the Department of Justice has applied a similar danger standard as a prerequisite for applying the UFAP statute?

Mr. MICHEL. None come to mind readily. Of course, the nature of the statute will suggest what sort of considerations ought to prompt a decision not to have Federal involvement. In bank robberies, for example, we often look primarily to the difficulty of the investigative effort at hand and the capacity of the State and local authorities to carry it out. Where the difficulty is high and their capacity is low, we exercise the broad Federal jurisdiction that the bank robbery statute gives us.

Where those factors don't apply, we defer to the States, even though we could, within the terms of the Federal Bank Robbery Statute investigate and prosecute.

Senator WALLOP. I guess what you are telling me is that the Department's standards and interpretation with regard to the UFAP law leaves cases of parental kidnaping as a sort of poor second cousin, an unwanted obligation, whereas other offenses don't require the application of the same kind of standards, don't require the same prerequisites before the Department gets involved.

Mr. MICHEL. No, Senator. I think that what I am saying, what I meant to say is, that with regard to most criminal offenses over which we have jurisdiction we make discretionary judgments and we decline to investigate and we decline to prosecute frequently because of any number of different factors, including danger that might apply.

Senator WALLOP. It isn't a question of prosecuting, is it? This is a question of a State's prosecuting. That is what the UFAP statute is about. That is why I am lost. You know, lawyers talk in marvelous terms nobody in the lay world can understand. You can draw things out of the sky and apply them to suit yourselves. No wonder the public looks with awe and wonder at people who hold law degrees. [Laughter.]

Mr. MICHEL. Senator, all I said is—maybe Shakespeare was right, "The first thing we do is kill all the lawyers." [Laughter.] Senator, I——

Senator WALLOP. Mr. Michel, I have one friend here who is a lawyer. [Laughter.]

Senator MATHIAS. No. I was just going to say that maybe Mr. Michel and I wouldn't agree with you that the public looks with awe and wonder at those who hold law degrees.

Senator WALLOP. Maybe not awe, but certainly wonder. [Laughter.]

Senator MATHIAS. There may be other emotions that are crowding in. [Laughter.]

Mr. MICHEL. Senator, let me respond though, if I can. My point was that we decline with regard both to initiating investigations and prosecuting cases. You are quite right, here prosecution isn't the consideration, but we decline to authorize FBI investigations under a whole range of statutes where there is not demonstrated need.

Senator WALLOP. Before moving to my last question, I would say that as a general rule there is a demonstrated need in child-snatching cases. I am concerned that the parental exemption and the Lindbergh law may extend to a detective or to other agents who assist a parent to kidnap his or her child.

As a general rule, will the Department prosecute a person under the Lindbergh law who is hired by a parent to mastermind or execute the snatching?

Mr. MICHEL. I would think that it would be rare and unusual in a case where we would be unable to justify that kind of prosecution as the law is written now. I think that your earlier allusion to whether Congress, in taking a fresh look at the overall problem, wants to clarify its intent or consider the current application of the Lindbergh law or if any of the other applicable laws is exactly the right area for congressional intention.

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As I said at the outset, the Department will execute on the determinations that the Congress makes, but you have to decide. It is not our choice.

Senator WALLOP. Thank you.

Senator MATHIAS. Before we terminate this very interesting and learned panel discussion, I have one comment and one very brief question.

I would say to Mr. Colwell that I agree with him entirely that it would be anomalous to have the FBI withdraw from the investigations of bank robberies while moving into a new area of responsibility. My answer to that is not that we shouldn't move into a new area of responsibility, but that we ought to stay in the bank robbery picture. I, for one, am very willing to provide the necessary resources to be able to do that job. I don't expect you to do it on reduced budgets or reduced resources. I think the point that you make is a very good one.

Mr. MICHEL. Thank you, Senator.

Senator WALLOP. Isn't it true that current FBI policy is to withdraw from as much as possible the bank robbery business and prosecute white-collar crime?

Senator MATHIAS. Senator Wallop is exactly right on that. There has been some policy to that effect, but the Congress has not accepted that. We are making an effort to provide the sinews of war against bank robbers so that we can continue to fight that battle. We will continue to do so. I think there is disposition in the Judiciary Committee not to withdraw and certainly the national statistics would indicate that is not a battle we are winning and that we can withdraw from. There was an increase of 23 percent in bank robberies last year.

Now, one final question for Mr. Michel. He may not want to—he may want to——

Mr. MICHEL. Senator, could I comment on the bank robbery matter?

Senator MATHIAS. Yes.

Mr. MICHEL. I think that I understand you to be suggesting that parental kidnaping problems may be viewed by Congress when it makes the kind of judgment it will make as an urgent priority and therefore one that would justify another chunk of FBI resources.

Senator MATHIAS. No. No. I am not making that point. All I am saying is that I fully realize that when we undertake a responsibility, whether it is maintaining the current level of activity in the bank robbery field or a new responsibility such as that suggested in this bill, it is necessary for us to provide the resources; we can't expect you to operate with the same level of support that you have had before you assumed those responsibilities.

Senator WALLOP. I agree with that.

Mr. MICHEL. That is what I thought, Senator. The added point that I wanted to make, or observation that I wanted to make, is that even if you were to add *x* number of agents in conjunction with adding the responsibility, the Attorney General in setting general policies and priorities and the Director of the FBI and Mr. Colwell and his colleagues would be confronted, I think, with an exceedingly difficult circumstance despite the added increase. Because, there are, as you said, in the area of bank robbery, and we could go up and down the line of major criminal problems in the country, already such a strain

on FBI resources that I think that the FBI management would confront impossible choices about whether the agent that would be added because of the increased responsbility really isn't needed even more urgently in the foreign counterintelligence program or in other priority programs than for cerain types of parental kidnaping cases is a terrible choice to have to make.

So, it isn't solved totally by an added number of agents.

Senator MATHIAS. Well, it may be that you won't have to make so many of those choices if we could discuss them a little bit. I think the disposition of Congress here is to be helpful and to reduce the kind of choices you have to make if we can agree on the priorities that we have to go after.

Mr. COLWELL. Senator, we in the FBI will do the very best we can with whatever the legislative judgment might be and with the resources we have. We will try to make a very fair and equitable distribution of the allocation of those resources whatever our assigned responsibilities are.

Senator MATHIAS. I am sure you will. We have confidence in you, but we don't expect the impossible. If you get a statutory responsibility, I want to go on record as saying that I think we have a serious responsibility for helping you get the resources and the assets with which to carry out those responsibilities.

Mr. COLWELL. Thank you, sir.

Senator MATHIAS. My final question relates to a statement that Mr. Michel made that to his knowledge this would be the first time that conduct made criminal by Congres can be totally excused by the after-the-fact actions of the defendant. Perhaps, Mr. Michel, you would like to comment on this later for the record. Title 18, section 1623, provides that in the court or grand jury proceeding one who makes a false declaration which is subsequentially admitted to be false, shall be barred from prosecution.

I don't know whether that is entirely on point, but it may be precedental and might be worth looking at.

Mr. MICHEL. Senator, the point of that line in the statement was simply to emphasize that our best guess is that there would be very few prosecutions arising out of whatever number of FBI investigations might be undertaken here. And with that we had the concern that between—the twin concern that there may be very little deterrence once it becomes known that these investigations don't lead to prosecutions.

Senator MATHIAS. I think that is a point to consider. Thank you.

Mr. MICHEL. Thank you, Senator.

Senator MATHIAS. Thank you all very much. I appreciate your testimony.

[The prepared statements of Mr. Michel and Mr. Hays follow:]

PREPARED STATEMENT OF PAUL MICHEL

Thank you for the opportunity to present to this joint hearing the views of the Department of Justice on S. 105 relating to the problem of "child snatching." Before discussing the specifics of S. 105, I would like to explain our current policy and involvement in this sensitive area.

As you know, the existing Federal kidnaping statute, 18 U.S.C. 1201, specifically excepts from its coverage the kidnaping of a minor child by his parent.

It has long been the Department's position that Congress, by virtue of this exception, has manifested a clear intent that Federal law enforcement authorities not become involved in domestic relations disputes. Nevertheless, our assistance through the use of the Fugitive Felon Act (18 U.S.C. 1073) is often requested where the child snatching violates a State felony provision. The Fugitive Felon Act prohibits interstate flight to avoid prosecution and was enacted as a device to bring Federal investigative resources to bear in the location of fugitives. In recognition of the intent implicit in the parental exception to the kidnaping statute, it is our policy to refrain from involvement in child-snatching cases through use of the Fugitive Felon Act. Occasionally, exceptions are made to this policy where there is clear and convincing evidence that the child is in serious danger of bodily harm as a result of the mental condition or acute behavioral patterns of the abducting parent. The U.S. attorneys have been instructed to consult with the Criminal Division before issuing complaints in child snatching cases. Requests for assistance that in the judgment of the U.S. attorney arguably merit an exception to our general policy of nonintervention and include the necessary statutory elements of interstate flight and an underlying felony charge are reviewed by attorneys in the Criminal Division. If an exception is warranted, a complaint and warrant of arrest are issued and an investigation is conducted by the FBI.

S. 105 employs both civil and criminal approaches to the child-snatching problem. The civil portions perceptively recognize that current law in many States encourages a parent who does not have custody to snatch the child from the parent who does and take the child to another State to relitigate the custody issue in a new forum. This kind of "forum shopping" is possible because child custody orders are subject to modification to conform with changes in circumstances. Consequently, a court deciding a custody case is not, as a Federal constitutional requirement of the full faith and credit clause, bound by a decree by a court of another State even where the action involves the same parties. The second State will often award custody to the parent within its jurisdiction, thereby rewarding the de facto physical custodian notwithstanding the existence of an order or decree of a court in another State to the contrary.

One method to eliminate this incentive for child snatching is the Uniform Child Custody Jurisdiction Act (UCCJA). The Act, which is not reciprocal must be enacted by each State. It establishes standards for choosing the most appropriate forum to determine custody and requires that once the jurisdictional tests are met, usually by the "home State" of the child, other signatory States must defer to the appropriate forum and cooperate with its exercise of jurisdiction. The act also provides that out-of-State custody decrees be recognized and enforced. To date some 39 States have adopted the UCCJA.

Section 3 of S. 105 would add a new section, 1738A to title 28 of the United States Code. In essence this provision would impose on States a Federal duty, under enumerated standards derived from the UCCJA, to give full faith and credit to the custody decrees of other States. Such legislation would, in effect, amount to Federal adoption of key provisions of the UCCJA for all States and would eliminate the incentive for one parent to remove a minor child to another jurisdiction. We believe that Congress' power under the commerce clause could sustain such legislation upon a properly substantiated record.

The heart of the plan is contained in proposed subsection 1738A(a) which provides that the authorities of every State "shall enforce, and shall not modify" any child custody determination made consistently with the provisions of the bill. For a custody determination to be consistent with the provision of the section, one of five factors, such as the State that entered the initial custody determination being the home State of the child, must occur. So, once a parent gets a custody determination in his or her favor in the home State, other States shall enforce and shall not modify the decree. The only minor exception, where another State may modify the decree, is if the court of the State that entered the decree no longer has jurisdiction or has declined to exercise it to modify the decree.

Section 4 of the bill would amend title 42 to expand the authorized uses of the Parent Locator Service (PLS) of the Department of Health, Education, and Welfare. The PLS has access to the records of other Federal agencies including the Social Security Administration and the Internal Revenue Service but under current law can only use these information resources to locate an

absent parent for purposes of enforcing support obligations. Section 4 eliminates the requirement of a support obligation and allows the PLS to receive and transmit information concerning the whereabouts of any absent parent or child for purposes of enforcing a child custody determination or for enforcing the proposed parental kidnapping section. The list of persons who are authorized to obtain information from the Service on the location of missing parents or children is expanded to include State authorities having a duty to enforce child custody determinations, State courts having jurisdiction to make child custody determinations, any parent or legal guardian of an absent child who seeks the child to make or enforce a custody determination, and agents of the United States who have a duty to investigate a violation of the proposed new criminal statute.

I understand that HEW and the administration are opposed to the expansion of the FPLS in the manner proposed in section 4 of the bill. However, whether or not the committee decides to broaden the mission of the FPLS for use in parental abduction cases, we urge that the committee give the civil provisions of the bill an opportunity to prove their effectiveness as a deterrent before enacting criminal sanctions.

The Department of Justice fully supports all of the civil provisions of S. 105. As I previously mentioned these provisions will reduce the incentive for child snatching by eliminating "forum shopping" and will insure that custody orders are consistent with the rights and interests of the child and each parent. Moreover, the approach taken by the bill will leave domestic relations litigation to the State courts, which, through years of experience, have developed the expertise and jurisprudence to handle it.

We have consistently and vigorously opposed the Federal criminalization of conduct involving the restraint of a minor child by his or her parent and we are opposed to the criminal provisions, section 5, of S. 105. The denomination of this conduct as criminal represents an entirely new, and in our view wholly inappropriate, involvement of the Federal criminal justice system in the area of domestic relations. We believe that the civil portions of the bill are a sound and constructive approach to the problem of child snatching. They should be given an opportunity to demonstrate their effectiveness before the conduct which they address is made a Federal crime.

The wording of section 5 itself points up the difficulty of a "criminal" approach to this problem. While the language reflects changes suggested by the Department of Justice when considering similar bills in the past, and represents a commendable effort to minimize FBI involvement, I would like to point out some aspects of the bill that make it an investigative and prosecutorial nightmare.

First, the bill provides in proposed section 1203(e) of title 18 that it is an absolute defense to a prosecution if the abducting person returns the child unharmed not later than 30 days after the issuance of a warrant. (We assume this refers to the issuance of a Federal warrant.) To our knowledge, this would be the first time that conduct made criminal by the Congress can be totally excused by after-the-fact actions of the defendant.

This provision requires agents to have the wisdom of Solomon. Suppose an agent, armed with a valid arrest warrant, locates the abducting parent under circumstances indicating the parent is returning the child, thereby establishing an absolute defense to prosecution. Should the agent arrest the parent thus bringing to bear the whole criminal process of fingerprinting, setting of bond and the like or should he simply hold the warrant and do nothing? What if the parent then changes his mind and flees again? By the same token, one can imagine how difficult it would be for a U.S. attorney to prosecute successfully a parent who returns the child on the 31st day but be forced to decline to prosecute the parent who returns the child on the 29th day.

Second, proposed section 1203(a) provides that it is an offense to conceal or restrain the child "without good cause." That requirement can be expected to present a very real dilemma for a U.S. attorney's office and the FBI when faced with a request to begin an investigation. Suppose a parent reports that a child was snatched because of a disagreement between the two separated parents over proper medical treatment or education or religious upbringing of the child. Is the FBI supposed to become involved in weighing conflicting points of view or opinions in these areas? Also, as anyone familiar with the child snatching problem is aware, the abducting parent will likely claim that he snatched the child precisely because of the behavior patterns, life style, or living

arrangements of the custodial parent which the abducting parent considered detrimental to the child. Thus the element of "without good cause" can be expected to be vigorously litigated in most prosecutions. One can imagine the unattractiveness of airing the "dirty linen" of a divorced couple's life in a criminal trial as the parent on trial tries to show that the custodial parent was such an evil person that the taking was for good cause.

Third, while proposed section 1203(d) contains a definition of "restrain," there is no definition of "conceal." The definition of restrain—to restrict the movement of the child without the consent of the custodial parent so as to interfere with the child's liberty by removing him from his home or school or confining him or moving him about—is itself not very clear. For example, the abducting parent may be expected to claim that the child's liberty was enhanced, not interfered with, by removing him from the home of the custodial parent or that the custodial parent consented to the removal of the child. The lack of a definition for "conceal" and the wording of the definition of "restrain" will likely cause problems for the FBI when asked to begin an investigation and of course the questions of whether the child was concealed or restrained in violation of the statute will be vigorously litigated at trial. For example, an abducting parent charged with "concealing" his child may try to prove that the child lived openly in the abducting parent's home and the victim parent just did not bother to come looking, which might be also offered as evidence of the victim parent's lack of concern for the child indicating that the taking was not without good cause.

Finally, an element of the offense that must be proved is that a child is concealed or restrained in violation of a custody right entitled to enforcement under proposed section 1738A of title 28. This requires a preliminary investigation by the FBI into the facts and circumstances surrounding the issuance of the custody decree as well as a legal determination as to whether the custody right is entitled to enforcement before a full investigation is even begun. If the parent is found, the same factors have to be considered when deciding whether to prosecute. These legal issues may be exceedingly complex and, indeed, may be the subject of litigation in one or more state civil courts at the very times when th FBI is faced with a request to investigate and the U.S. attorney is considering criminal prosecution.

In addition to these tremendous prosecutorial problems, prosecution for violations of the act would ordinarily require the testimony of the victim child testifying against a parent and thereby exacerbating the emotional trauma for all parties in these cases. This, of course, comes on top of the danger to the child that would come with criminalization.

Anyone who considers this sensitive problem has at the center of his thoughts the safety and welfare of the child who is often caught between the well-intentioned but competing claims of his parents. Sending the FBI to locate and arrest a parent may, in the case of an emotionally distraught parent, carry the potential for violence and, consequently, danger to the child.

Criminalization would place a severe strain on the resources of the FBI and the U.S. attorney. Although the bill delays Federal investigative involvement for 60 days after both the filing of a report with local law enforcement authorities and a request for assistance of the State parent locator service, in view of the tens of thousands of cases annually we would be called upon to enter a significant number. Investigations and prosecutions would necessarily divert precious resources from other areas such as white collar crime, public corruption, and organized crime that have traditionally been the focus of Federal law enforcement efforts.

That concludes my formal statement and I would be pleased to answer any questions from the subcommittee.

PREPARED STATEMENT OF LOUIS B. HAYS

Mr. Chairman, members of the Subcommittee on Criminal Justice, and the Subcommittee on Child and Human Development, I appreciate the opportunity to be here today to provide the administration's views on S. 105's impact on the Department of Health, Education, and Welfare. The bill would authorize the Office of Child Support Enforcement's Federal Parent Locator Service (FPLS) to locate individuals who have taken children in violation of a court order that granted custody of the children to another individual. This authority would

operate if the violation involved taking the children across a State or U.S. boundary and within the special maritime and territorial jurisdiction or the special aircraft jurisdiction of the United States. It would also operate if the child is a foreign official, an internationally protected person, or an official guest.

The administration is supportive of measures to deter parental kidnapping, but we do object to making the FPLS available to locate children who have been taken in violation of a custody decree. The FPLS records are obtained, as described later in my testimony, from tax filings and social security records. To extend the use of tax return information, where no substantial Federal interest has yet been demonstrated, would be inconsistent with congressional and administration policies to protect most strictly the privacy of taxpayers and information supplied in their returns. We are also concerned by the bill's potential for diffusing the mission of the child support agencies. To adequately describe these misgivings I would like to take a moment to discuss the Child Support Enforcement program and the principles upon which it is based.

The program is a Federal/State effort to locate absent parents, to establish paternity of the children and to insure that absent parents provide support payments for their children. The effort is essentially focused on collecting child support to reimbuse welfare expenditures, reducing the welfare caseload and keeping marginally indigent families off the welfare rolls. The program is succeeding. One of the major reasons for its success is the single goal. collection of support, apparent to all those participating in its administration. We believe that requiring child support agencies, many of which are already insufficiently staffed for optimum productivity, to assume additional responsibilities and caseload would disrupt the administration of the child support program and prevent it from reaching its full potential.

If the subcommittees should pursue the use of the FPLS, we would make the following recommendations. Assistance from the State child support agencies should be confined to using the Sate Parent Locator Service to refer requests for address information to the FPLS in the same manner that they currently submit requests in child support cases.

The use of the SPLS should be limited solely to local law enforcement officials. Under such a provision local law enforcement officials, after having received a report of a parental kidnapping, would be the coordinators of the child search effort and would use all resources available to them, including a request to the SPLS. This approach would allow the officials who are attempting to deal with violations of State custody laws to access the SPLS instead of putting the burden on the parent who may not have the information or ability to use the system.

We would also point out that the bill does not create a duty on the part of the State agencies operating the SPLS to accept location requests in parental kidnapping cases. Neither does it authorize States to charge fees for costs incurred in accepting and processing these requests, or in searching records for a child, or the individual who took the child, in violation of a child custody order. Further, consideration should be given to financing the costs that would be incurred if the FPLS is made available.

The main sources of home and employer addresses available to the FPLS are the records of the Social Security Administration (SSA) and the Internal Revenue Service (IRS). Both these agencies now have annual reporting requirements. SSA expects to complete recording changes of address contained in the employers' wage report covering 1978 by April 1980. The IRS records are updated by the September following the April personal income tax filing deadline of every year. An immediate request to FPLS for location of a recently kidnapped child or the individual believed to have taken the child might, therefore, prove unfruitful.

No reliable data on the number of incidents of parental kidnapping are available. Information from the Congressional Research Service and the American Bar Association indicate a possible range of 25,000 to 100,000 a year but, of course, no accurate figure can be projected for unreported incidents.

The foregoing comments are technical in nature and should not be construed as detracting from our opposition to the proposed expansion of the functions of the FPLS.

Senator MATHIAS. Our next witness is Dr. Doris Jonas Freed, chairperson, Committee on Custody, American Bar Association.

STATEMENT OF DR. DORIS JONAS FREED, CHAIRPERSON, COMMITTEE ON CUSTODY, AMERICAN BAR ASSOCIATION

Dr. FREED. Thank you.

Senator MATHIAS. Dr. Freed, because of the serious nature of this legislation, we are having trouble containing the dialog. We will be glad to accept your statement in full, as if read and have you summarize it and highlight it.

Dr. FREED. Mr. Chairman and members of the subcommittees, thank you.

I also, Mr. Chairman, am a member of the Council of the Family Law Section of the American Bar Association. I am chairperson of the section's Custody Committee and Committee on Research and Statistics. I am a practicing attorney from New York City. I am also admitted to the bar in Maryland, and, 95 percent of my practice is devoted to family law. I appear before you today, Mr. Chairman, at the request of the American Bar Association's president, Leonard Janofsky, to inform you of the association's views on legislation to reduce the number of episodes of parental kidnaping.

Over the past several years, the American Bar Association and the members of the Family Law Section have been vitally concerned with this ever-growing problem to which your attention has been called many times this morning of child snatching, and its harmful effect on the snatched child, to say nothing of the parents.

On August 10, 1977, the American Bar Association's house of delegates adopted a resolution approving in principle the proposition that interstate child stealing by one parent from the custodial parent is a serious problem for which improved Federal law enforcement is needed and requesting the American Bar Association's section of family law to study methods of improved enforcement and to report its findings to the house of delegates. This section, over an extended period, studied all aspects of the problem and its legal ramifications and then made a series of recommendations to the house of delegates. So much for history.

In August 1978, the American Bar Association's house of delegates adopted five resolutions aimed at reducing the number of episodes of child snatching. These five resolutions, Mr. Chairman, are attached to my written statement which has been filed here.

Senator MATHIAS. That will all be a part of the record.

Dr. FREED. As appendix A.

The five resolutions adopted by the American Bar Association recognized indeed the desperate need for a comprehensive approach to the problem of child snatching such as is evidenced in S. 105 under consideration today, as well as in the child-snatching provisions of S. 1722, the proposed Criminal Code legislation, as reported by the Senate Judiciary Committee on January 17, 1980.

You have heard what child snatching refers to, so I won't go into that, but just to say that implicit in child snatching is also the wrongful retention of a child by a noncustodial parent after the expiration of a visitation period. And, as we have heard today, according to social service officials, there are between 25,000 and 100,000 child-snatching incidents which occur each year.

The American Bar Association believes, Mr. Chairman, that the time has come now to take action to curb this problem. The Family Law Section of the American Bar Association views the sensitive and emotional problems of child custody litigation as the most pressing problems faced by all lawyers in the family law area. And, a major concern in this area are the issues of parental child napping and similar unlawful practices. The section has given priority status to the child-snatching evil in the election of matters in need of immediate attention.

To a large extent, a solution for these cases, involving courts of two or more States, is provided by the Uniform Child Custody Jurisdiction Act which I will call the UCCJA, for purpose of brevity, although I am not sure that it is brief, which generally specifies that one State will respect custody orders worked out in the home State of the child. This act promulgated by the Commissioners on Uniform State Laws in 1968, was adopted by the American Bar Association in that same year.

However, at first there was little action taken by the States with regard to the UCCJA. In fact, until 3 years ago, the number of States which had adopted the UCCJA was only 9, whereas today, as we have heard ad infinitum, there are 39 States which have enacted the act into law. Having just talked yesterday, with Mr. John McCabe, the counsel to the Commissioners on Uniform State Laws, I can verify that number. Vermont, which has generally been thought to have adopted the act still has not done so.

The States which have not acted as yet are: Alabama, Kentucky, Massachusetts, Mississippi, New Mexico, Oklahoma, South Carolina, Utah, West Virginia, and the three jurisdictions of the District of Columbia, Puerto Rico, and the Virgin Islands. Although, hopefully, this act will soon be adopted nationwide, the concerns at stake are in the opinion of the American Bar Association too pressing to await that goal.

Additionally, and this we believe is most important, the UCCJA itself is not a cure-all for the evils involved in child snatching. Other necessary measures as contained in the American Bar Association resolutions and in S. 105 must be undertaken.

Of the five American Bar Association resolutions, Resolution No. III, which approved the child-snatching provisions set forth in S. 1437, the Criminal Code Reform Act of 1978, as passed by the U.S. Senate on January 30, 1978, is most relevant to our discussion of S. 105. I want to mention that briefly.

A review of the provisions contained in S. 105 reveals that its child-snatching provisions are substantially the same as those of S. 1437, as passed by the U.S. Senate, on January 30, 1978, and as approved in Resolution No. III, by the American Bar Association's house of delegates. Most of the differences between the two bills are mere clarifications. I have gone into those in detail in my written statement, so I won't take the time to do it again.

The American Bar Association thus supports in principle and encourages the passage of S. 105. We especially approve the comprehensive approach to the problem of child snatching contained in S. 105. We also approve the fact that the legislation which we are dis-

cussing today is aimed at encouraging a parent who has snatched or retained a child to return the child to the parent with lawful custody as opposed to punishing the abducting parent.

While the legislation makes it a misdemeanor to violate a valid child custody determination, it does create a defense to the prosecution where the abducting parent or his agent returns the child unharmed to the other parent within 30 days after an arrest warrant has been issued. We approve heartily of that approach. In addition, Mr. Chairman, to Resolution No. III, three of the American Bar Association's other resolutions on this subject are encompassed by S. 105. The substance of the American Bar Association Resolution No. I, that the legislatures of the States which have not yet adopted the UCCJA be encouraged to do so at the earliest opportunity is clearly set forth throughout S. 105.

The adoption of legislation by the U.S. Congress to accord full faith and credit to the child custody and visitation decrees of each State as stated in the American Bar Association's Resolution No. II, is clearly set forth in section 1738(a), of S. 105, entitled, Full Faith and Credit to Child Custody Determinations.

Also, American Bar Association Resolution No. IV, to amend the jurisdiction of Federal and State locator services so as to expand their existing responsibilities to include locating parents who wrongfully take, restrain, or conceal their children is also clearly mandated by S. 105.

It is my opinion, sir, that S. 105, when enacted into law, will go far in providing the comprehensive solution sought by all of us in our efforts to eradicate the pervasive and existing evils of child snatching. As has been mentioned today, and I don't think it can be emphasized too much, due to the growing incidence of divorces now over 1 million a year and still not leveling off and the ever-increasing numbers of children involved in these divorces, the child-snatching epidemic must be stamped out. These lives are worth whatever the cost may be to the Federal Government and to the taxpayer.

Perhaps in the future new solutions will be devised or may be devised to cope with the devastating results of family breakdown in the form of: (1) Adoption of alternative methods to the adversary procedure of child custody determinations; and (2) new forms of custody arrangements such as shared custody. These solutions may eventually cause parents to lose the incentive to snatch their children. In my opinion, a parent satisfied with a custodial arrangement is not going to attempt to snatch the child in the family. However, favorable action on S. 105, despite what we envisage for the future, is urgently needed now.

The ABA commends you, Mr. Chairman, and members of the committees, for addressing yourself to this widespread nationwide problem. We urge enactment of legislation such as S. 105.

On behalf of the association, I thank the chairman and the subcommittees for permitting us to present these views.

Mr. Chairman, the question has been asked several times as to which States criminalize child snatching. I might, if you wish, give you a number of States, although I am not exactly sure which of them

have put teeth into their State child-snatching statute. Among them are Arizona, Iowa, Kansas, Minnesota, New Jersey, North Dakota, and Wisconsin. Similar measures have been introduced in the legislatures in a number of other States, including Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, New Mexico, Puerto Rico, and Utah. Some of such bills may be law as of this date.

Now in North Dakota, the laws of 1979, chapter 198, provide that removal of a child from the State in violation of a custody decree constitutes a class C felony.

In Texas, S.B. 806, which has also been signed into law makes it an offense to retain a child under 18, in violation of a custody agreement. Now I am not sure whether the Texas statute makes this a felony or a misdemeanor. However, I think that it is important that there are a growing number of States which are enacting penal laws to help stamp out this evil.

Thank you, Mr. Chairman.

Senator MATHIAS. We thank you very much for being here. I was interested in one adjective that you used. You said that child snatching is an evil. I suppose there could be mixed motivations for child snatching, some of them less attractive than others, but one of the motivations is the love of a parent for a child.

Dr. FREED. That may be true, sir, subjectively, and that is why, in addition to the enactment of S. 105, perhaps other methods for child custody determinations may help in the solution to the problem.

Senator MATHIAS. Well, we thank you very much for your statement and for your participation and for the interest of the American Bar Association.

Dr. FREED. May I mention just one other fact, sir. I note that in the Hague Convention the terminating age is up to 16.

In the full faith and credit provision of S. 105, the terminating age is 18.

In the misdemeanor portion of S. 105 the terminating age is 14. I think that we can see that it is very obvious why the distinction has been made.

I just wanted to add that. Thank you, sir.

Senator MATHIAS. Well, that is a helpful explanation. Thank you very much.

[The prepared statement of Dr. Freed follows:]

PREPARED STATEMENT OF DORIS JONAS FREED

Mr. Chairman and members of the subcommittee: I am Doris Jonas Freed, a practicing attorney from New York City where 95 percent of my practice is devoted to family law. I am a member of the Council of the Family Law Section of the American Bar Association. I am also chairperson of the Section's Custody Committee and chairperson of its Committee on Research and Statistics. I appear before you today at the request of the ABA's president, Leonard Janofsky, to inform you of the association's views on legislation to reduce the number of episodes of parental kidnapping.

Over the past number of years, the association and the members of the Family Law Section have been vitally concerned with the ever-growing problem of child snatching and its harmful effect on the snatched child.

On August 10, 1977, the association's House of Delegates adopted a resolution approving in principle the proposition that interstate child stealing by one parent from the custodial parent is a serious problem for which improved Federal law

enforcement is needed and requesting the ABA's Section of Family Law to study methods of improved enforcement and to report its findings to the House of Delegates.

In August, 1978, the House of Delegates adopted five resolutions aimed at reducing the number of episodes of child snatching. These five resolutions are attached as Appendix A.

The five resolutions adopted by the House of Delegates were part of a package of six recommendations that were submitted to the House by the Family Law Section to remedy the problem of child snatching.

By a standing vote of 79 to 89 the House declined to approve a sixth recommendation of the section. This recommendation was to support enactment of Federal criminal legislation making the wrongful removal of a child from a parent entitled to custody to another State or country a misdemeanor.

The Family Law Section had, over a period of several months, studied all aspects of the problem of child snatching and the legal ramifications thereof prior to making its recommendations to the House.

The five resolutions adopted by the ABA recognize the need for a comprehensive approach to the problem of child snatching, an approach evidenced also in the bill under consideration by your subcommittees, S. 105, as well as by the child-snatching provisions of S. 1722, the proposed Criminal Code legislation, as reported by Senate Judiciary Committee on January 17, 1980.

"Child snatching" refers to the abduction of a child from the parent with legal custody by the parent without legal custody. Implicit is also the wrongful retention of a child by a noncustodial parent after the expiration of a visitation period. This practice has been increasing in volume over the last decade, most likely as a direct result of the filtering down of the knowledge that by removing the child to a new State it might well mean a "new ball game" for the participants, giving the noncustodial parent a second bite of the apple as applied to custody awards. All too frequently, the State of the child's new location has held a de novo hearing (to insure itself that the child's best interests are being cared for), regardless of the expense or emotional effect on all concerned. Consequently, this frequently has caused the child and the parents to remain in an uncertain litigation status for several years.

According to social service officials, between 25,000 and 100,000 child snatching incidents occur each year. (See Remarks of Congressman William F. Walsh, *Congressional Record*, July 13, 1978, E 3739). The ABA believes the time has come to take action to curb this problem.

The Family Law Section of the ABA views the sensitive and emotional problems of child custody litigation to be most pressing problems faced by lawyers in the family law area. As a major concern in this area are the issues of parental child snatching and similar unlawful practices. The section has given priority status to the child snatching evil in the selection of matters in need of immediate attention.

To a large extent, a solution for these cases, involving courts of two States, is provided by the Uniform Child Custody Jurisdiction Act which generally specifies that one State will respect custody orders worked out in other States. This Uniform Child Custody Jurisdiction Act (hereinafter referred to as the UCCJA), was promulgated by the Commissioners on Uniform State Laws in 1968, and adopted by the American Bar Association in that same year. However, at first there was little action taken by the States with regard to the UCCJA. In fact, until 3 years ago, the number of States which had adopted the UCCJA was only 9 whereas today about 39 States have enacted the act into law. Those who had not done so as of December 1979, were: (1) Alabama, (2) Kentucky, (3) Massachusetts, (4) Mississippi, (5) New Mexico, (6) Oklahoma, (7) South Carolina, (8) Utah, (9) Vermont, (10) West Virginia, and the three American jurisdictions of the District of Columbia, Puerto Rico and the Virgin Islands. Since the act is not a reciprocal one it is incumbent on all adopting States to follow it even though the other State concerned has not adopted the act. Although hopefully the act will eventually be adopted nationwide, the concerns of children are too pressing to await this ultimate goal.

Additionally, the UCCJA itself is not a cure-all for the evils involved in child snatching, and other necessary measure as contained in the ABA resolutions must be undertaken.

Of the 5 ABA Resolutions, Resolution No. III, which approved the child-snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as

passed by the U.S. Senate on January 30, 1978, is most relevant to our discussion of S. 105.

A review of the provisions contained in S. 105 reveals that its child-snatching provisions are substantially the same as the child-snatching portions of S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978, and as approved in Resolution No. III by the Association's House of Delegates. Most of the differences between the two bills are mere clarifications.

We note some minor differences. For example, under § 1624 of S. 1437, a person is guilty of an offense if he intentionally restrains his child in violation of a child custody determination entitled to enforcement under the full faith and credit provisions, a valid written agreement between the child's parents, or the relationship of parent and child (absent a custody order or written agreement. Section 5 of S. 105, however, states that whoever restrains a child in violation of another person's right of custody arising from a custody determination entitled to enforcement is guilty of an offense. This change was made to insure that those acting as agents for the abducting parent can also be held criminally responsible.

However, in principle, the criminal and civil provisions of S. 1437 and S. 105 are the same and thus the ABA supports, in principle, and encourages passage of S. 105.

We especially approve of the comprehensive approach to the problem of child snatching contained in S. 105.

We also approve of the fact that the legislation is aimed at encouraging a parent who has snatched a child to return the child to the parent in lawful custody as opposed to being aimed at punishing the parent who has snatched his or her child. While the legislation makes it a misdemeanor to violate a valid custody determination, it creates a defense to prosecution where a defendant returns the child unharmed to the other parent within 30 days after an arrest warrant has been issued.

As stated by Senator Wallop in an article entitled "Children of Divorce and Separation: Pawns in the Child-Snatching Game," published in Trial, May, 1979, pp. 34 at p. 37, "S. 105 is offered as a comprehensive solution to the child snatching problem. The civil and criminal provisions combine to fill a void in existing laws which will greatly assist in reducing the number of child-snatching episodes in America * * *."

In addition to Resolution No. III, three of the ABA's other resolutions on the subject are encompassed by S. 105.

The substance of ABA Resolution No. I, that the legislatures of the various States which have not yet adopted the UCCJA be encouraged to do so at the earliest opportunity, is clearly set forth throughout S. 105.

The adoption of legislation by the United States Congress to accord full faith and credit to the child custody and visitation decrees of each State, as stated in the ABA Resolution No. II, is clearly set forth in § 1738A of S. 105 entitled "Full Faith and Credit to Child Custody Determinations."

Also, ABA Resolution No. IV, to amend the jurisdiction of Federal and State Locator Services, so as to expand their existing responsibilities to include locating parents who take, restrain or conceal their children, is clearly mandated by S. 105.

It is my opinion that S. 105, when enacted into law will go far in providing the comprehensive solution sought by all of us in our efforts to eradicate the pervasive and existing evils of child snatching. Due to the growing incidence of divorces (now over 1 million a year) and the ever-increasing numbers of children involved in these divorces, the child snatching epidemic must be stamped out. Perhaps new solutions will be devised to cope with the devastating results of family breakdown in the form of: (1) adoption of alternatives to the adversary system of child custody determinations; and (2) new forms of custody arrangements such as shared custody. These solutions may eventually cause some of the parents who would not otherwise do so to lose incentive to snatch their children. However, favorable action on S. 105 is urgently needed now.

The ABA commends you for addressing yourselves to this widespread nationwide problem. We urge enactment of legislation such as S. 105 to help prevent child snatching.

On behalf of the Association, I thank the Chairman and the Subcommittees for permitting us to present these views.

Attachment.

APPENDIX A

RESOLUTION OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION, ADOPTED AUGUST, 1978

I

Be It Resolved, That the American Bar Association encourages the legislatures of the various states which have not yet adopted the Uniform Child Custody Jurisdiction Act to do so at the earliest opportunity.

II

Be It Resolved, That the American Bar Association urges the Congress of the United States to enact legislation which would require the courts of the states to accord full faith and credit to the child custody and visitation decrees of each state, pursuant to Article IV, Section 1, of the United States Constitution.

III

Be It Resolved, That the American Bar Association supports the child snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978.

IV

Be It Resolved, That the American Bar Association recommends that upon occurrence of a snatching of a child, and a request for assistance and relief by the custodial parent from whom said child was removed, the Department of Health, Education, and Welfare, the State Department, the Justice Department, and any other federal and/or state agencies who can provide immediate assistance, make their existing resources available to such parent, and provide such assistance as is available for the location and apprehension of the child.

V

Be It Resolved, That the American Bar Association urges the United States Congress, in treaties, and the State legislatures, in statutes, to take appropriate measures to provide in extradition treaties and statutes that the removal of a child from a custodial parent, in violation of an existing court decree, to another state or country, be construed as an extraditable act.

Senator MATHIAS. Our next witness is Mr. Lawrence T. Kurlander, the district attorney of Monroe County, N.Y.

STATEMENT OF LAWRENCE T. KURLANDER, DISTRICT ATTORNEY, MONROE COUNTY, N.Y.

Senator MATHIAS. Mr. Kurlander, I know you are familiar with the pressures of time. We will accept your written statement, as if read orally in this hearing. I am wondering if I could get into it immediately by asking you to comment on the testimony which you have just heard the Justice Department give, stating their opinion that there are adequate powers in local government and that the participation of the Justice Department was really not necessary as suggested in this pending legislation.

Mr. KURLANDER. First, Mr. Chairman, I was somewhat shocked and dismayed, I might add, at the comments of the Justice Department in stating that S. 105, if enacted, would lead to confrontation and violence, emotional trauma to children. I have had the opportunity of working with the Federal Bureau of Investigation for a number of years now, and frankly speaking, we find them to be a highly trained, a highly motivated, highly sensitive organization. We have been involved in a number of very tense situations with them, and at no time

did I see any confrontation or violence. So, I was very suprised to see the Department of Justice making such a statement.

The other thing is that there has been comment made by the Department of Justice that this is essentially a civil matter. I might state that we often in the criminal law deal with civil matters, which are equally important to us as prosecutors and to the civil law as well. Let me cite you just one example. Last year in this Nation there were approximately 50,000 highway deaths. Of those 50,000 deaths, approximately 32,000 were alcohol-related.

The local prosecutors of this Nation very aggressively prosecute the overwhelming number of people involved in those alcohol-related cases for either criminally negligent homicide, and, indeed, in some jurisdictions such as our own in New York State, for manslaughter. That is not to diminish in any way the civil litigation which ensues. In virtually 100 percent of the cases there is civil litigation. One does not detract from the other one.

I think that there is an urgent need here for Federal intervention. We have neither the resources nor the capability of crossing State lines to deal with this problem.

Senator MATHIAS. There is no doctrine of "hot pursuit," in this.

Mr. KURLANDER. Well, there may be a doctrine of "hot pursuit," Senator, but it is virtually impossible for us to pursue from Rochester, N.Y., to the State of Maryland.

The problem is an ever-growing one. Federal legislation is long, long overdue in this area.

The FBI has the resources. They are a phone call away from virtually every city, every small town in this Nation. Regardless of the impact of the Uniform Act and whether or not it is adopted by the 11 remaining States, that is irrelevant. But you know when we talk about this problem, sometimes cool intellectual discourse on a subject like this does not yield what I consider to be the human dimension here.

If I can cite for you just one example that occurred recently. A child, a boy of about 7 was riding his bicycle with training wheels in a suburban suburb of Rochester. He hadn't seen or spoken to his father in 4 years. The boy's name was Robbie. He lives with his mother and sister. It was a late afternoon in June. One neighbor was on a ladder working on his roof and another was mowing his lawn when suddenly a car pulled up to the child. While the driver of the car and a man crouched in the back remained inside the vehicle, two men jumped out of it, knocked the bicycle to the ground, grabbed Robbie, threw him in the back seat of the car. As the neighbors ran after the vehicle, it squealed away to be found abandoned some 2 hours later.

The man in the back seat told Robbie he was his father. Robbie was dubious. He didn't eat for hours. After all, Robbie's mother had warned him about taking food from strangers. Senator, Robbie was transported to Colorado, and on the way he told several persons he had been kidnapped. The people did not believe him or didn't quite know what to do. Robbie was not mature enough to make a long distance call.

This is no movie script. It really happened. It is happening every day, many times a day; unfortunately in most of the cases, it does not end happily. In Robbie's case, it did. But even in Robbie's case which

happily ended, the amount of psychological, emotional and, indeed, physical trauma is something we can only guess at and we won't know for years if indeed ever whether there will be permanent damage.

We don't even know the magnitude of the problem. I have heard many estimates here this morning ranging from 25,000 to 100,000. All are really shots in the dark. We believe that it is absolutely essential to adopt S. 105 and to do so forthwith.

If I may address the most controversial part of the bill, the question of making violation of a custody decree a Federal crime. This is questioned on the ground that a violation does not constitute a crime in the traditional sense at all. It is not the kind of criminal matter about which the Federal Government ought to concern itself. Child snatching is a crime by any reasonable test of what constitutes criminality; that is, as one commentator put it, in the classical definition of crime as opposed to civil injury: "Is the violation of a right considered in reference to the evil tendency of such violation as regard the community at large."

That child snatching happens to be a domestic problem does not make it less of a crime. If that were the test then wife murder would be a matter for family court and not for prosecutors.

The test is not whether there is also a civil wrong, but rather the evil tendency of the violation as regards the community at large. When individuals forcibly attempt to dismantle a court-approved family structure, the damage that they do to the community is obvious.

The victims of the crime, most importantly the child, and to some lesser extent custodial parent, obtain a benefit as an incidental result of prosecution does not detract from the criminal nature of child snatching any more than the recovery theft victims sometimes obtain make the theft any less criminal. In New York State child snatching is a crime. It is custodial interference. It is a misdemeanor, in some cases, in most cases, and in some limited cases it is a felony.

Federal criminal law has been widely used to punish antisocial conduct of primarily local concern when local authorities have shown themselves unequal to the problem. Examples of this are statutes making it a Federal crime to cross State lines in a stolen automobile, transport women across State lines for immoral purposes, indeed, kidnap across State lines and more. I submit to you that child snatching is more, may I say, intrinsically criminal than say Mann act violations, not to mention violations of ICC regulations. Too often local authorities are unable to meet the problem. The very fact that custody decrees are not always enforced across State lines tends to erode the fabric holding us together as a Nation. Certainly the Federal Government may properly use its penal powers to reverse the evils of child snatching.

One more thing, Senator, and that is I believe that the provisions of S. 105 making it a crime are too weak. I believe it ought to be a felony because I believe in that way it will further deter those who might otherwise be tempted to violate the criminal laws of this Nation.

Thank you.

Senator MATHIAS. Thank you. I am sorry that Senator Wallop isn't here to hear that last point, but he has left a very accurate, able pair of ears behind him. We appreciate your testimony. It has particular

importance because you are so frontally and immediately involved in this problem.

So, we put a high degree of reliance upon your testimony. We have a number of technical questions with regard to the language of the criminal provision of S. 105. We will propound those to you in writing and would appreciate it if you would respond for the record, so that your responses can be included as a part of your testimony.

Thank you very much, Mr. Kurlander.

Mr. KURLANDER. Thank you, Senator.

[The prepared statement of Mr. Kurlander follows:]

PREPARED STATEMENT OF LAWRENCE T. KURLANDER

Mr. Chairmen: S. 105 represents the basis of a congressional plug to a gigantic crack in the criminal justice system. I wholeheartedly support the goals of this bill, and generally support the bill's civil provisions. Even more, I support its criminal provisions, which give the bill its strength. Indeed, I would make them stronger yet. Interstate child snatching is an outrage crying out for a solution.

The subject of child snatching is unusual in that cool intellectual discourse about it can obscure rather than illuminate the subject. Discussing the merits of a complicated piece of legislation severs the problem from its human dimension.

To understand the essence of child snatching, one should put aside the legislation for the moment; forget about the implications of nonfinal custody decrees to the full faith and credit clause. Picture, if you will, a child, say a boy about 7, riding his bicycle with training wheels in a residential suburb of Rochester, N.Y. He hasn't seen or spoken to his father in four years.

The boy's name is Robby; he lives with his mother and sister. It is a late afternoon in June. One neighbor is on a ladder working on his roof; another is mowing his lawn.

Suddenly a car pulls up to the child. While the driver and a man crouched in the back remain inside the vehicle, two men jump out of it, they knock the bicycle down, grab Robby, and throw him in the back seat of the car. As the neighbors run after the vehicle, it squeals away; to be found abandoned some 2 hours later.

The man in the back tells Robby he's his father. Robby is dubious. He doesn't eat for hours. After all, Robby's mother has told him not to take food from strangers. Transported to Colorado, the youth tells several persons he's been kidnapped. People don't believe it, or know quite what to do; and Robby is not mature enough yet to make a long distance phone call to his mother.

This is no movie script; it really happened. This story ended happily. With the help of our office, Robby was located and his mother obtained a Colorado court decree granting her custody. But for every case that ends well like this one, there are many more that do not. And even in Robby's case, the amount of psychological trauma he suffered is something we can only guess at. We won't know for years whether there'll be permanent damage.

When something like this happens once, it's a tragedy. The horror is things like this and worse are happening every day.

What is the magnitude of this problem, I've heard many estimates; all are shots in the dark. We don't know, because there are no really effective mechanisms to gather statistics.

I do suggest, however, that the problem, already intolerable, is going to explode if we don't act, as the divorce rate skyrockets, single-parent households become less unusual, and our society grows ever more mobile.

The parent locator and criminal provisions of the bill would have the valuable side benefit of developing reliable data on this subject.

I think every student of child snatching agrees the problem is widespread; the disagreement lies in determining how best to deal with it.

My feeling is S. 105 goes a long way in the right direction, though there are sections of it I would modify. (My detailed analysis of the bill follows these general remarks.)

The most controversial part of the bill, of course, is that section making violation of a custody decree a Federal crime. This is questioned on the grounds

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that violation does not constitute a crime in the traditional sense at all, and, also, it is not the kind of a criminal matter about which the Federal Government ought to concern itself.

Child snatching is a crime, by any reasonable test of what constitutes criminality. That is, as one commentator put in a classical definition, a crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. (4 Steph. Comm. 4.)

That child snatching is also a domestic problem does not make it less a crime. If that were the test, then wife murder would be a matter for family court.

No, the test is not whether there is also a civil wrong, but the evil tendency of the violation as regards the community at large. And when individuals forcibly attempt to dismantle a court-approved family structure, the damage they do to the community is obvious.

That the victims of this crime—the child and the custodial parent—obtain a benefit as an incidental result of prosecution, does not detract from the criminal nature of child snatching, any more than the recovery theft victims sometimes obtain makes the theft any less criminal.

Child snatching is a crime in New York (Custodial Interference, Second Degree, Penal Law 135.45, a misdemeanor; and 135.50, a felony).

When an interstate child snatching occurs, Federal prosecution is the logical way to deal with it.

Congress power to legislate here arises under the "necessary and proper" clause of the Constitution. (article I, section 8, clause 18; see Marshall, J. in *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat) 316 (1819)). This gives the Congress the power to create statutory crimes concerning conduct within the United States, as it has done many times, providing penal sanctions for violations of rules regarding interstate transportation, communication, the marketing of securities, the regulation of labor, and the like.

Federal criminal law has also been widely used to punish antisocial conduct of primarily local concern, when local authorities have shown themselves unequal to the problem. Examples of this are statutes making it a Federal crime to cross State lines in a stolen automobile, transport a woman across such lines for immoral purposes, kidnap across State lines, and more.

I submit child snatching is more, may I say, intrinsically criminal, than say Mann Act violations, not to mention violations of ICC regulations. Too often, local authorities are unable to meet this problem. The very fact that custody decrees are not always enforced across State lines tends to erode the fabric holding us together as a nation. Certainly the Federal Government may properly use its penal power to reverse the evil of child snatching.

None of what I'm saying is to suggest that child snatching is not a civil wrong as well. It is. As more states adopt the Uniform Child Custody Jurisdiction Act, the ability of custodial parents to obtain custody civilly, and even money judgments, increases.

But that is not the whole answer. Child snatchers usually go underground; finding them is really the biggest problem. That is where the FBI can contribute mightily. Then, the legal fees involved in proceeding civilly are often beyond the reach of the custodial parent. Since the noncustodial parent is likely not to be particularly stable or affluent, the spector of a money judgment may not worry him much.

In short, the civil route, useful as it is in certain cases, may not be feasible in many others. The ones in which it won't work are those in which some remedy is most needed—where the snatching parent goes underground, and has no resources, and is unlikely to provide much of a home life for the child.

The penal sections give the law teeth.

But we've got to have real teeth, not false teeth; false teeth just don't scare anyone. There are several parts of the bill that are too weak.

Of these, the most significant is section 5, making child snatching a misdemeanor. It should be a felony, not because child snatchers are horrible criminals, but because the threat of a felony is a far stronger deterrent than that of a misdemeanor.

Also, our experience has been that Federal police agencies work more diligently when they are working on a felony, rather than a misdemeanor case.

Finally, I want to commend the Senate for entertaining this legislation, which is so long overdue.

Attachment

ANALYSIS OF S–105

Our analysis of specific sections of the bill follows:

Section 2. Findings and purposes

Placing the legislative findings and purpose in a statute is extremely valuable in that it assists the courts in interpreting the statute, and, helps prevent the statute from being applied in an overbroad manner. I also assists in evaluating the statutory provisions to determine whether the body of the statute is likely to correct the problems noted, or to meet the purpose set forth.

One particular problem from the point of view of law enforcement has not been articulated in the findings and purpose, but should be mentioned. Existing conditions promote not only a disregard for court orders, but a more serious disregard of our system of justice and the authority of our legal system to settle disputes in an orderly manner. In a period when the institution of the family is in danger of breaking down, it is of increasing importance that our remaining institutions appear strong and vital.

One further point to be stressed is that although more and more States appear to be adopting the provisions of the UCCJA, there is no guarantee that all States will adopt these provisions. An example from recent history demonstrates that at a time when 49 States had public policy to restrict gambling, Nevada as a public policy chose to foster gambling under State control. Also at a period when the majority of States chose to make the obtaining of a divorce difficult, Nevada again chose to provide a relatively easy method of obtaining a divorce. The point here is a State could conceivably determine that it was in its interest to provide an alternative to parents deprived of custody in a sister State. Passage of this Federal law can assure a uniform treatment. This too should be mentioned as a purpose of the legislation.

Section 3. Full faith and credit

For States that have adopted the UCCJA, the terms of the Federal law should pose no problem, because the criteria are fundamentally the same. There could be a problem of constitutional dimensions for those States which have not adopted the provisions of the UCCJA, and one can foresee the possibility of a challenge on the basis of State sovereignty.

The proposed S. 105 should provide the guidelines for granting of comity in the event the statute is successfully challenged.

Section 4. Parent locator service

The problem with this section refers to the problems noted under the Parental Kidnapping section.

Section 5. Parental kidnapping

The problems with this section are threefold:

First, the purpose of detering interstate snatching of children is unlikely to be met if the penalties are not severe enough to deter the activiies. The maximum incarceration should be for a period of five years with judicial discretion dependent upon circumstances.

Those provisions for mitigation in the event a child is returned unharmed are not specifically defined. Since it is a finding of the Congress that the snatching of children, with the attendant disruption presents a very real risk to the child's emotional well being, the term "returned unharmed" should include more than simple physical well being.

Second, it is imperative that in the event a child has been removed, an immedate investigation be commenced before the fugitive has an opportunity to gain cover. Therefore, the provisions for utilizing the State Parent Locator, which in turn will contact the Federal Parent Locator and 60 days elapsed before a Federal investigation can be commenced is totally inadequate. An investigation which locates the child, and arrests the parent responsible for the child snatching, within a few days of the act is clearly the most positive deterrent available.

Third, the crime is the unauthorized taking of a child with intent to keep the child from his lawful parent. Those provisions for seeking a warrant are ambiguous in that there are conflicting State laws. The Federal law should provide for an immediate warrant and criminal investigation upon the lawful taking of a child.

Senator MATHIAS. Our next witness is Mr. Andrew Yankwitt, the counsel for the Citizens League on Custody Kidnaping.

STATEMENT OF ANDREW YANKWITT, COUNSEL, CITIZENS LEAGUE ON CUSTODY KIDNAPING

Senator MATHIAS. Mr. Yankwitt, I don't have to remind you of our time pressures. We will accept your statement and it will be inserted into the record at the conclusion of your oral testimony.

Mr. YANKWITT. Thank you, Senator.

Senator MATHIAS. We would appreciate your comment.

Mr. YANKWITT. Thank you, Senator.

Senator, a lot has been said here about child snatching. The organization I represent has recovered approximately 120 children. I, myself, have participated in over 60 cases in approximately 20 States.

I believe it is important to state first that the Uniform Child Custody Jurisdiction Act passed in approximately 39 States does work. That act specifically says that a custody decree from one State must be enforced and cannot be modified by the courts of other States. Accordingly, one motive for child-snatching jurisdictional shopping has been done away with. For, no longer will States refuse to recognize and enforce custody decrees of another State. Those States which have passed the act are prohibited from modifying the decree of the rendering State and instead, must turn the child or children of the parent who has been given lawful custory in the State of original jurisdiction.

Dr. Freed has testified here today that one of the motives for child snatching is love of a child. Perhaps I misinterpreted it, but I would like to say that is not true. In the 60 or so cases that I have personally participated in, I have never seen the love of a child be one of the motives for child snatching. The main motive that I have seen for child snatching is revenge, revenge by one parent over another parent. It is trying to hurt the other parent. It is trying to hurt the custodial parent.

Senator MATHIAS. Not concern for the child?

Mr. YANKWITT. No, sir; no concern for the child at all.

Senator MATHIAS. Never?

Mr. YANKWITT. Never. Senator——

Senator MATHIAS. That is a pretty shocking comment on the human condition.

Mr. YANKWITT. Senator, how can a parent be showing concern for his child when he takes the child away from the lawful custodian and says to the child, "You'll never see your parent again." How can that be showing concern? It isn't.

Sixty clients that I have represented in 2 years of practice in this field, not once has love of a child been shown. In one graphic illustration the child was snatched for 5 years. The child didn't even reside with the parent who snatched him. He resided with an uncle who beat the kid almost continually every day. That, sir, is what child snatching is all about.

So the Federal Government sits here and says "We can't get involved. It's a family offense. It is a domestic offense." But the Federal Government has gotten involved already and should be further involved now. The Federal Government has gotten involved with child prevention acts. The Federal Government has gotten involved with child abuse. All that is needed for this legislation to pass, in my own view, is for the Federal Government once and for all to recognize that child snatching is child abuse. Once we recognize that it is child abuse, we have to put a stop to it.

Some 25,000 to 100,000 kids are snatched—some 25,000 to 100,000 cases of child abuse. Yet, the Federal Government sits here, the Department of Health, Education, and Welfare sits here and says, "We don't want to get involved." I do not understand it. I really don't.

Senator MATHIAS. So you take the traditional view that the predominant principle here is the welfare of the child and the welfare of the child is always jeopardized by child snatching?

Mr. YANKWITT. Absolutely, Senator; absolutely. You know, you belt a kid in the mouth or you hit a kid with a strap. In some cases that I have been involved in a child snatching, in fact, you burn the kid with an iron. Senator, that burn, that welt, that bruise can heal. Sitting in the audience today is a lady whose child I recovered approximately 3 weeks ago in Michigan. The child was 15 months old when that child was snatched. The child was recovered 15 months later when the child was 2½ years old.

I ask you, not as a lawyer, not as a Senator in the U.S. Senate, but both as human beings, how long is it going to take that kid to recover from that trauma? You don't. It doesn't happen. It can't happen. The child for 15 months of his rather infant life was deprived of his mother, deprived of a nurturing home, deprived of a secure and serene environment. Instead, the child was taken from State-to-State-to-State and hid. The child was 15 months old. She is lucky, she was able to use, incidentally, the parent locator service who helped her track down DMV license plates. I know they are not supposed to be reimbursed, but they were. She was able to locate her husband, but she was lucky.

I have recovered 120 kids. That is terrific. I have 600 kids in my file who are missing. I call the FBI and I call the district attorney's office. Unfortunately, I am not in Monroe County, maybe I could get more help. But I call the district attorney's office of Nassau County or the FBI and they say, "What do you want us to do? It is a family offense. Resort to civil remedies."

Senator, we cannot minimize the harm done to children by child snatching. I am not a psychologist. I am not a sociologist. I have no background in those fields whatsoever. All that I can tell you as a practical lawyer, a lawyer who works on the street, so to speak, to bring on writs of habeas corpus, to bring on warrants of attachment to recover children, those children are emotionally traumatized for years. They don't grow up to be U.S. Senators. They don't grow up to be lawyers and doctors; most of them grow up to be rather unproductive citizens.

The Federal Government decries the cost of $200,000 to recover children. We are spending a hell of a lot more now by augmenting these people, because they don't grow up to be the most productive citizens. They don't pay taxes.

I should like to make one comparison which has not been made here. We decry the holding of 50 hostages in Iran. We are spending millions of dollars thinking of going to war for 50 marines and I think that

is fine. Yet, the Federal Government sits here and says, "We won't do anything for 25,000 hostages," because that is what they are. They are hostages of people who are seeking revenge against their ex-spouse. They are emotionally traumatized children.

Senator, I hope that my statement has not been too emotional. When I wrote it out it didn't look that way, but I must say that it is a very emotional issue. When you are involved in it, it is rough to keep your own feelings at a minimum. I don't think there has been any time that I have been further moved than watching a mother who hasn't seen her kid for 1½ or 2 years or 3 years take that child in her arms.

Yes, there are many ways of reforming divorce laws. The Supreme Court in *Orr* v. *Orr* has said you should not discriminate between fathers and mothers in granting custody and that is true and that will continue to be true, but let's put the record and let's put the issue on the table. Again I repeat, snatched children are abused children. Snatched children have to be protected by the Federal Government.

Thank you very much.

Senator MATHIAS. Thank you for being here.

[The prepared statement of Mr. Yankwitt follows:]

PREPARED STATEMENT OF ANDREW YANKWITT

Honorable Sirs: By way of introduction, my name is Andrew Yankwitt. I am an attorney admitted in the State of New York, and I am general counsel to the Citizen's League on Custody and Kidnapping, a nonprofit organization incorporated under the laws of the State of New York. I come here today to testify in favor of the legislation presently before this honorable body. This legislation has been too long in coming and is much needed.

By way of credentials, I am a member of the American Bar Association and the Family Law Section of the American Bar Association. I have been a lecturer and a consultant on child custody matters and the organization I represent has aided parents throughout this country who have obtained lawful custody, recover children. When the children are found, we have never failed to recover them. That recovery is always by legal means, either by writ of habeus corpus, writ of attachment, or other remedies available in the various States in this Union. I have participated in over 60 cases in approximately 20 States wherein I have recovered over 120 children.

I believe it is important to state firstly that the media and various organizations have too long ignored the legal process available to recover children. The Uniform Child Custody Jurisdiction Act has been passed in 38 States in this country. That act specifically says that a custody decree from one State must be enforced and can not be modified by the courts of another State. Accordingly, one motive for child snatching has been done away with; no longer will States refuse to recognize and enforce a custody decree of another State. Those States which have passed the act are prohibited from modifying the decree of the rendering State and instead must turn the child or children over to the parent who has been given lawful custody in the State of original jurisdiction.

It is unfortunate that many parents and lawyers do not know of the existence of this law, but one of the aims of my organization, is to educate and inform both the public and lawyers that the Uniform Child Custody Jurisdiction Act does work. By informing the public and lawyers of this act, we can perhaps eliminate some child snatching. Unfortunately, this civil law enacted in 38 States, is not enough to prevent the great majority of child snatching. The motive of a child snatcher is not, in the great majority of cases, lawful custody of the child.

The American people decry the holding of 50 American hostages by the Ayatollah in the country of Iran. The Ayatollah holds these hostages to bring America to its knees and to give Iran what it wants; the return of a sick old man. The fact of the matter is that this Ayatollah is not unlike the parents who snatch children to bring their ex-spouse to their knees, so that their ex-spouse will come crawling back to them. We are not talking of 50 hostages in Iran, but rather,

in this case, between 25,000 and 100,000 hostages. Those hostages, gentlemen, are not marines, but young children.

Psychologists and sociologists will or have testified today to the detrimental effect child snatching has on children. I am neither a psychologist or sociologist, but I will testify to you that while most of the children snatched are not physically abused, they are mentally abused and the trauma caused by snatching survives for many years. I submit to you, that that trauma is far worse than a bruise, or a welt, or a burn. I further submit to you, that the abuse we are talking about will long survive a broken leg, a broken arm, or even sexual abuse. We are speaking, here, of children who will have the trauma of a snatch with them for many, many years, and for too long that trauma has been long disregarded by the authorities.

What about the parents who snatch children? Most of them, if not all of them, do not do it out of love of children. Any intelligent human being can see that to deprive a child of one parent, to conceal the child, to abscond with the child, and to run with the child, is not done out of love of a child. It it done to hurt, to spite the ex-spouse, to bring the other party to beg for forgiveness for even thinking of divorcing them in the first place. It is not done for love of child, it is done to hurt and revenge oneself on the other parent. Sometimes it works! Sometimes the other parent does in fact suffer nervous breakdowns or complete mental collapse.

To compare the hostage situation in Iran, and child snatching, it is not a far fetched, or unlikely comparison. I repeat, that the ayatollah Khomeini imprisons hostages to bring America to its knees. The absconding, abducting, child snatching, or kidnapping parents hurts their child or children for the same reason, to bring their former spouse to their knees, to get revenge, to hurt.

America describes the hostage situation in Iran, but officials in this country, including Federal, State, and Local Law Enforcement Officials, ignore child snatching. The assistant police commissioner of the city of New York has written me a letter which states that even though child snatching is a misdemeanor in the State of New York, and sometimes a felony, the police department in no way will act to enforce custody orders. They believe it to be a civil offense, a family offense, an offense outside their jurisdiction. Simply, gentlemen, they do not want to get involved. Simply, gentlemen, they do not want to help a child. They are too busy with other things. This can no longer be tolerated.

The FBI has the same attitude. From my limited knowledge of Federal criminal law, I would submit that a person committing a misdemeanor or felony and thereafter fleeing the State, is a fugitive from justice and can be picked up under Federal criminal law. But everytime the FBI is notified of the crime of child snatching they respond "it is a family matter" or "we are too busy" or "we are prohibited from getting involved" or "we will not get involved." That gentlemen, I submit, is absolutely wrong. If a child is snatched, or kidnapped for ransom, the FBI makes headlines over it. Great efforts are made to recover the child, including wire tapping, marked money, and every other device available to the FBI. When the parent snatches the child, and holds it for ransom, not for money ransom, but to bring their ex-spouses to their knees, the FBI says, "no, it is a family offense and we will not get involved." I ask, "what is the difference to the child?" Does the 3-year-old child know that the ransom being demanded is not money but revenge? A child does not know the difference and the victims of either kidnapping or child snatching are children.

Earlier in my testimony, I spoke of the Uniform Child Custody Act and the aid this new legislation has given many parents and their children. Simply stated, when a parent learns the whereabouts of the child, that parent, if they have a lawful custody order, presents a certified copy of that order to the clerk of the court in whose jurisdiction the child has been found. Simultaneously, the parent should file through a lawyer a writ of habeas corpus, warrant of attachment or other similar legal process and have the court issue an order which orders the sheriff or other comparable authority to pick up these children and bring them before the court. The judge or judge presiding then will check the custody order presented, make sure that the state rendering the decree had jurisdiction to issue that decree and further decide if proper notice was given. If those basic criteria are met, the court must then enforce the decree of the rendering State and turn the child over to the parent having legal custody.

I have outlined the very simple procedure and of course there are, as in every law, some loopholes involved. But basic to this law is that one State will not over-

turn a custody order simply because the child is now, after being snatched, before the new court. This new law further provides that a court may impose costs on the party who steals and absconds with the child. In one case $5,000 was awarded and in another Federal case, child snatching was considered a tort and $80,000 was awarded in damages.

This is an excellent law and I am looking forward to the day when all fifty States will adopt it. Many children and their parents have literally been saved by it. Many more parents and children will be saved when the general public and their lawyers aquire a good working knowledge of the act.

It is not enough. I have recovered 120 children but there are still 500 children in my files who are missing, still in the company of sick parents who are using, abusing, and yes, even torturing their children in their quest for revenge against their ex-spouse. The legislation proposed here would, in my opinion, allow and impose a duty on the Federal Bureau of Investigation and the Parent Locator Service to locate those who snatch children and aid the parents who have lawful custody in the recovery of the child.

The opposition to this bill seems to be saying that this legislation will make criminals out of parents who are simply exercising their parental rights, no matter how foolish that may be.

Let's set the record straight and put the issue on the table. The mere fathering or mothering of a child, the mere sexual intercourse, does not give a person the right to abuse their infant. The child is an individual with rights that must be protected. This has long been recognized as the law. Child Protective Services has agencies in all fifty states. That agency recognizes that children cannot be abused by their parents. They recognize that children cannot be tortured. Child Protective Services will bring criminal charges against parents who mentally and/or physically abuse their children. Gentlemen, all that is left to do, is for this committee to understand the simple fact that child snaching is child abuse! This legislation is needed to protect children and therefore this legislation should be passed now.

The opposition still insists that the Federal Government should not get involved in this area. Psychologists and sociologists testifying here today will tell you, and if they don't I will, that a snatched child does not grow up to be your lawyer, your doctor, your dentist, or professional. Just as a victim of child abuse has emotional trauma, children who are snatched become insecure adults who are unsure of themselves and the world about them. They have grown up running from place to place and hiding.They become, in most cases, a burden on society. Twenty-five thousand to 100,000 children grow up to become for most of them burdens on society. Many of these children are on welfare. As adults, they remain on welfare. Snatched children, when they become adults, do not pay taxes, and are less then productive. The Federal Government is already involved in paying the cost. Paying the cost does nothing to prevent or cure. This legislation can prevent child snatching. It can prevent a child from becoming a less than productive adult. It may even result in the saving of taxpayer's dollars. The Federal Government can not ignore abused children nor destruction of the life of one child much less the lives of 25,00 to 100,000 children.

Sitting next to me is Gay Childress. The child of Ms. Childress was snatched when that child was 15 months old, and remained snatched, abducted, and concealed until Ms. Childress was able to recover the child, 15 months later. Her statement reads as follows:

"On May 7, 1977, I gave birth to a beautiful son, Johnathan Enoch Wells. Fifteen months later Johnathan was stolen from me by his father while exercising his weekly visitation. This began the most horrid and excruciating nightmare that I have ever experienced.

"Some background is necessary. After months of deterioration, my marriage ended. I had been a victim of mental and physical abuse from my ex-husband. Custody of our son, child support and visitation had been agreed upon between my husband and I, and a custody order was given to me in August of 1978.

"September 19, 1978, started as any other day until I left work to take my baby home from the babysitter. When I arrived at her home, she told me that something was wrong. Johnathan had not been returned by his father. I tried contacting my ex-husband at his home that evening. There was no answer. His family would not talk to me over the telephone. I called the local and State police only to find there was nothing that they could do until a court order had been issued ordering his arrest. Of course, by the time this was accomplished,

my husband had been gone for 2 weeks. Capus warrants were issued for his arrest but service could not be made. Neither he nor my baby were anywhere to be found.

"In October of 1978, I hired a private investigator in West Virginia. This effort to locate my son was fruitless. The investigator could not find a trace of my child in the surrounding areas. I then learned about a support and maintenance program through the local welfare department. I paid a nominal fee and my case was opened. The support and maintenance program, tried to locate my ex-husband through his social security number. Months dragged on but their efforts did not yield any information.

"During the first 7 months of the child snatching, I received several telephone calls from my ex-husband. These calls were never informative, but were used to drive the knife in deeper. He would tell me that my son had cried all night asking for me or that I would never see my son again. Once he even went as far to call and let me hear my son crying over the telephone.

"It was in July of 1979, that I learned of an organization called Citizen's League on Custody and Kidnapping through a newspaper article that I happened to come across. I called Cathi Fenton, who is the director of this organization in New York. Ms. Fenton gave me several ideas on ways to locate my ex-husband. One of these suggestions that she made were to write to Division of Motor Vehicles for each State to determine vehicle registration. One of the letters mailed was to the Department of Motor Vehicles in the State of Michigan where I knew my ex-husband had relatives. The first response I received reported they had no record on file. I waited 3 months and followed the same procedure. This time the report was positive and I was given a home address for vehicle registration in Grand Rapids, Mich. It was then that I hired a private investigator in Grand Rapids, to do some follow up work for me.

"My ex-husband was located and I finally found the location of my son in December of 1979. Upon receiveing this information, I called Cathi Fenton in New York, who advised me of the Uniform Child Custody Jurisdiction Act, which enforces custody decrees from out of State. Cathi also informed me that the State of Michigan is one of the states that has adopted this act.

She also referred me to Andrew Yankwitt, an attorney from New York. Mr. Yankwitt had helped Ms. Fenton recover her children from Florida. Immediately, I called Mr. Yankwitt, explained my situation, and he assured me that he would help me retrieve my baby.

"We flew to Michigan on January 3, 1980, and by January 4, Mr. Yankwitt had scheduled a hearing with Judge Hoffius, Judge of the Circuit Court for Kent County, in Grand Rapids, Mich. After presenting my custody decree from Tazwell County, Virginia, and hearing Mr. Yankwitt's argument, Judge Hoffius ordered my child to be returned to me. The nightmare has now almost ended.

"Even though my son and I are reunited, there are still moments of extreme fear and apprehension. Fear of if and when the whole nightmare that lasted for 15 months will happen again. What protection do we have? My son has emotion scars and I wonder if there is anything or enough laws to ever erase these scars from his mind. Everytime someone knocks at the door, Jonathan gets hysterical. The first question he asks is "mommy is someone coming to take me away?" He also asks "why did my daddy take me away?"

My baby is 2½ years old and I ask myself what has these 2½ years been like for him? Not as it should have been for a baby. It is my opinion that child snatching is a morbid and diseased crime where the child is the victim. Yes the pain for me is intolerable, but what about the pain my baby has experienced? Why did his innocent mind have to be twisted to the point of insecurity and torn by this deranged act? We have laws in this country against every crime imaginable from parking violations to rape. Why can't we protect the 100,000 innocent victims of child snatchings that occur each year in the United States? These children are helpless. I feel that it is the responsibility of the U.S. Government to provide adequate laws and to enforce these laws which will provide protection for our children."

This story does have a happy ending, unfortunately, too many stories don't. This honorable body must not forget the trauma caused to this child. The trauma caused to a child who was deprived of a nurturing home and forced to be without his mother. Gentlemen, that little boy has incurred trauma, and that trauma will be with him for the rest of his life. We cannot ignore that. Nor can we ignore that the majority of the children snatched, because, of the inadequacy of Fed-

eral law and State law, are not being recovered. Ms. Childress's story has a happy ending, to some degree, but there are 25,000 to 100,000 stories that don't.

This legislation will deter child snatching. This legislation will help to recover children. Neither Ms. Childress nor her child would have endured the trauma and torture of 15 months. That is why the organization and I are in favor of it and that is why we urgently ask you to pass it. Jonathan Enoch Wells had to endure the trauma of a snatch when he was 15 month old. This legislation can not cure that trauma, but can prevent it from happening to another child.

Finally, I am asked why am I involved in this? Was I the victim of a snatching? I was not a victim of a snatching. My father died when I was 12 years old, and my mother died when I was 14 years old. I was raised by uncles, who constantly told me how bad my father was. They told me that if my father loved me, he would have slowed down. Gentlemen, those statements are not half as bad as what victims of child snatchings are told. Gentlemen, I say to you that the insecurities that were built up in me, my own loss of identification, my own doubts about my father, lived with me a great time. It was only through years of personal therapy that I came to realize that they were stupid for telling me such things. I was fortunate, however, I knew my real parents. I was not snatched when I was 3 years old or 15 months old. I knew my parents' friends, and I was gradually able to regain my identity and overcome my insecurity. Gentlemen, the victims of child snatching are not that fortunate. Please, please protect them and pass this legislation. Thank you.

Senator MATHIAS. Our next witnesses will be a panel of Mr. Arnold I. Miller, president, and Ms. Rae Gummel, vice president of Children's Rights, Inc.; Ms. Patricia McRobert, international director, and Mr. Archibald Eccleston III, legal counsel, of Parents Without Partners, Inc., and Mr. Harold Miltsch, director of Stop Parental Kidnaping, Inc.

PANEL OF PARENTAL ORGANIZATION OFFICIALS:

STATEMENTS OF ARNOLD I. MILLER, PRESIDENT, AND RAE GUMMEL, VICE PRESIDENT, CHILDREN'S RIGHTS, INC.; PATRICIA McROBERT, INTERNATIONAL DIRECTOR, AND ARCHIBALD ECCLESTON III, PARENTS WITHOUT PARTNERS, INC.; AND HAROLD MILTSCH, DIRECTOR, STOP PARENTAL KIDNAPING, INC.

Senator MATHIAS. Perhaps we could ask Mr. Miller to proceed. Again, it is a matter of great regret to the chair to have to remind you the clock is ticking, but we have many more witnesses today, and I must ask you to limit your statement just as much as possible.

Your written statements will be included in the record at the conclusion of your oral testimony.

Mr. MILLER. Thank you, Senator. I will try to keep this as brief as possible.

We are Children's Rights, Inc. We have been in existence for about 5 years. The main thrust upon the issue that we have been doing research on has been the issue of child snatching. We have 90 chapters throughout the United States. We have a "hotline," and "lend an ear program," which includes a lot of victimized parents, parents who have had their children taken. Their sole responsibility is to be there when this child snatching occurs to other parents. They will be able to help other parents in that respect. We are a volunteer organization.

There are three main functions that we do. We act as clearing house of information on the child-snatching issue. We counsel parents both by phone and through letters and we give interviews with the press. We also give technical assistance on State and Federal and international levels. That includes The Hague Conference, the U.S. Commission going to The Hague Conference on International Parental Child Snatching.

If I can take a moment, I would like to say a few words about my personal case. I had a son taken at the age of 4½, about 5 years ago. If it was not for my personal case, the organization of Children's Rights would never have been established, at least not by myself. It has taken me 5 years and about $15,000 later to finally find him in March 1979. The situation upon which I found the child was one of shock and appalling. We went through a very costly custody battle in Muncie, N.Y., under the direction of Judge Alfred Weiner. The final decision was that the child was to be left with the mother.

Of all the cases that I have come across we find that kind of like an astounding answer to this one, not only in answer, but how it began, because 5 years ago, in your own State, Senator, the State of Maryland, the mother had custody, and I had visitation rights.

Here is a case where the custodial parent disappeared. As I have sat here today in the audience and listened to many of the other people talk, especially from the bar association, they seem to stress the fact that this is a custodial issue. It has become clear to us in the past 5 years that that is the opposite. It is not a custody issue.

Senator MATHIAS. It can cut either way.

Mr. MILLER. It just isn't a custody issue. Seventy percent of the snatchings which occur, occur prior to a court decree. This is usually done about a week or two just prior to Mom and Dad going into the courtroom. We do not doubt the fact, and we don't deny the fact there is a court case pending. That seems to be the critical time when children are taken. We have come up with 70 percent. At the time he is taken we have equal custody of the child. That gives us a large national problem as to which State when the child is found actually has jurisdiction.

One of the things that we are running up against is the fact that when the child is found the parent who has absconded with the child has custody now in the foreign State. The victim parent, after spending thousands of dollars looking and sometimes several years, an average of about 2½ years searching for the missing child or children finds out that they have either no right, the child has no rights and we start the whole process over again.

What we are asking Congress to do today is to support and recognize and pass S. 105, and we are asking for a few other minor changes.

Let me just briefly say, back to my personal case, as far as my son, he was being taught many prejudices and racial beliefs which I disagree with. I don't think that is reason to hide a child which to me is the basis upon which child snatching—it is a concealment of a child from another person. That is why we say there is not really a custody issue. A child has a right to know and love both parents. We would like to see that right upheld and continued.

I would like to address some of the statements that were made earlier. The Justice Department stated that they did not want to get in and settle custody disputes. We support that. We do not want the Federal Government settling custody disputes; however, we need their

assistance in the location of a child. After that point, we would like the local courts to settle the custody dispute. We need the location and investigative activity which the Justice Department has proven themselves specifically very well adapted to in child-snatching cases.

We have in our files a goodly number of cases which the FBI and the Justice Department has intervened in and within 2 to 6 days usually the child is found. The Justice Department made a comment about having to haul off parents and I don't think that is the attitude that we would like to see the Justice Department take. I don't think that is what the Federal Government nor our organization is asking the Justice Department to do.

Their main concern, as I understand it, is lack of resources. Our feeling is that really is no excuse for letting children be traumatized every day at the rate of 100,000 a year which are child snatched. That 100,000 figure, by the way, is about 2 years old and on a rough guesstimate through our files for this hearing today, it appears that that figure is growing. A personal opinion, Senator. Congress is on a collision course with the time to save these children, our future generations. These children are traumatized by child snatching and child restraint.

The comment of the sight of the mother and the father being handcuffed and led away was brought up by the Justice Department as well. I take personal affront to the Justice Department thinking that the law enforcement agencies are that much concerned that they are going to not want to expose children to hauling off handcuffed young moms and dads. I personally was under such a situation. At no time did the law enforcement people ask me, "Do you have a family at home?" It just didn't happen. If I had told them, "Yes, I have a son at home," they would have taken the handcuffs off and everything would have been fine. To my knowledge, the law enforcement people never asked the bank robber or the alleged bank robber if they have a family at home and how many kids. I don't think that that becomes an issue when we have made the arrest and have the law enforcement involved.

Senator MATHIAS. Perhaps I should ask you if you wish to suspend at this point, Mr. Miller. We will get back to you if we can; let us go to Parents Without Partners for a brief statement and then we will go to Stop Parental Kidnaping for a statement and then we will come back for additional comments.

Ms. MCROBERT. Thank you for the opportunity to speak on S. 105, the Parental Kidnaping Prevention Act.

My name is Patricia McRobert, international director, zone F, Parents Without Partners, Inc. I am a fourth grade teacher in the Park Hill, R–5 school district, located in the suburbs of Kansas City, Mo. On September 26, 1979, in my fourth grade classroom, I experienced a child-snatching incident.

Christine Mongs, age 9 years, lived with her father and grandparents in Kansas City, Mo. Christine's parents were separated in July 1977, while living in Leesburg, Fla., and subsequently divorced in July 1978. Prior to the separation in July 1977, Christine was sent to Kansas City, Mo., to live with her grandparents. The judge made Christine a ward of the court with the custodial decision open and stated that this decision would be made when she returned to Florida. I talked

with Mr. Mongs on January 22, 1979, and he relayed to me that Christine's mother has since been awarded temporary custody of her, subsequent to her return.

Christine had had infrequent contact with her mother whom she had not seen for 3 years. Her grandmother sensed her nervousness on that morning last September 26, as she answered the phone quickly and hurried to meet the schoolbus. She rode the bus to school; then quickly ran to join her mother who was waiting with a car to take them to Kansas City International Airport for the return trip to Florida.

I was routinely taking the daily attendance when the students told me of Christine's disappearance. It was a feeling of fear that quickly saw me go to the principal's office to have our school secretary call the father and grandparents. My principal summoned the police who were quick to respond. Within 30 minutes, the father, grandparents, and police found Christine and her mother at the Kansas City International Airport waiting for a flight to Florida.

Mr. Mongs relayed to me that the Kansas City, Mo., police told him that there was nothing they could do unless an altercation occurred and at such time both parents would be arrested and Christine made a ward of the Platte County Missouri Court. He did not wish this to happen; thus, he waits silently hoping his daughter will decide to return to Missouri to live with him. The Florida court's indecisiveness in granting open custody enabled the absent parent to successfully snatch a child with no legal recourse.

There are 22 children in my fourth grade classroom. Nine children—41 percent, live with their nuclear family. Six students—27 percent, are members of a reconstructed family. Seven—32 percent, live in a single-parent family home. During this school year I have observed the trauma and anxieties experienced by these children as they continue to shuffle between parents.

The children of divorce in my room expressed fear and apprehension as they were concerned for Christine's safety. Several of them verbalized to me how they would react should this happen to them and asked me what should they do?

It is unfortunate that children become pawns between the parents thus creating scars they will carry their lifetime. The emotional trauma was and is prevalent with children who are prospectives to be snatched by their absent parents. It is more unfortunate that they must live in fear of such frightening incidents while trying to be a child and cope with their daily lives. I feel we need to penalize these parents who cannot abide by the court's decisions.

The child's feelings should be considered. Reciprocity among States should help to stabilize the child custody issue and discourage those parents who seem unable to abide by the court's decision. I urge you to make S. 105 a law in order to better protect the children of divorce from these traumatic experiences.

Thank you.

Senator MATHIAS. Thank you very much. You confirm Mr. Miller's feeling that there is damage to children.

Ms. MCROBERT. Yes.

Senator MATHIAS. It has to be the motivating force that drives this legislation.

Let us go next to Stop Parental Kidnaping, Inc., and then we will come back to the other witnesses.

Mr. MILTSCH. Thank you, Senator. In the interest of conserving this committee's valuable time, I will be very, very brief. I will provide you with a brief synopsis of my prepared statement.

Then, perhaps more importantly, I would like to respond to some of the statements and testimony we heard earlier from Mr. Michel and Colwell.

Unfortunately, my wife——

Senator MATHIAS. Your statements in every case will appear in the record at the conclusion of your oral testimony.

Mr. MILTSCH. Thank you.

Unfortunately, my wife and I know firsthand how badly such legislation is needed.

In 1977, my wife and I, and even more especially, our 7-year-old son, became victims of parental kidnapping. We were very, very fortunate because our district attorney, even though avenues were limited, pursued a very hectic and a very hot-paced investigation. A senior investigator, Thomas Loracella spent countless hours investigating our case. The end result was that our child was returned.

This, to me, indicates that things can be done when law enforcement officials apply interests and the motivation in every avenue that is open to them.

I think that it is very important to apply our success rate which was achieved by our district attorney to the Federal level. Certainly, with the limitations that confronted our district attorney, those limitations are not going to be necessarily encountered by Federal law enforcement officials. After our entire incident was over and our child was returned to us, we realized that many, many people are in the same predicament as we are. So, we formed Stop Parental Kidnaping, Inc., which is an organization which is attempting to provide positive alternatives to people. We were not able to wait for S. 105. We have started to do and prepare media which can possibly help in the interim.

We are currently publishing a newsletter, Return Our Children, which defines the problem. It is sent out to each and every school in the United States and Canada. It also provides illustrations and photographs of some kidnaped children. It is our hope that at least this is something that can be done in the interim before S. 105 is passed. We certainly support S. 105. We feel that S. 105 is the type of legislation that will put teeth into our efforts as well as the efforts of every law enforcement official that is interested in prosecuting and investigating these type of cases.

More importantly now, I would like to respond to some of the statements that were made by Mr. Michel. He indicated to us that the FBI and the Attorney General officials are really not able to determine emotional problems. They cannot really ascertain allegations made by parents and are just unable or unequipped to differentiate between arguments made among parents. Yet, later on he indicated to us that when a UFAP warrant is requested that the FBI can in fact sort out claims made by parents and based upon sorting out these claims, a UFAP warrant is either issued or not.

I would suggest that the Attorney General has a very strong contradiction here. I am afraid that considering the few UFAP warrants that have been issued, it would seem to me the Attorney General is not able to sort out the claims. Perhaps more importantly, there was much emphasis given to the fact that we should not, the FBI should not, put children into the position of being witnesses on any type of a trial because of the terrible emotional problems that would be incurred.

In my own experience, my son, my stepson has, in fact, testified both in civil and criminal trials, in open court as well as in chambers.

Senator MATHIAS. At what age, Mr. Miltsch?

Mr. MILTSCH. Eight and 9 years old, over a period of time. I can personally guarantee you that he has welcomed the opportunity to air his mind of the problems that he had undergone. He testified with no reluctance at all, requested to testify in future trial proceedings, and at no time was his testimony detrimental to his emotional well-being; in fact, quite the contrary, his testimony has really provided the road to a better recovery for his own emotional well-being. I think those things are fairly important because there are many contradictions that we have heard this morning and the validity of some of the claims made by the Attorney General and the FBI apparently are not valid. I certainly want to bring those out.

In final summation, I certainly support S. 105. We hope that this effort today will be the first step in passage of that legislation.

Senator MATHIAS. Thank you very much.

Now, Ms. Gummel, did you have something to say to supplement Mr. Miller's testimony?

Ms. GUMMEL. Yes, Senator. First of all, thank you for this opportunity. I appreciate that virtually everyone here who has testified, except for the representatives of the Federal Government, has said essentially the same thing that this is an enormous problem and this legislation is the very best thing that has come up as a solution today.

We do have a couple of problems with the legislation as it is written however. I would just kind of like to get those into the record.

First of all, the provision in the definition of child snatching and this is something that Mr. Miller did touch on, as defining it as the taking from a custodial parent. Our files which include close to 6,000 cases, collected over a 5-year period, indicate that over 70 percent of these children are taken prior to a custody award. I think it is grossly unfair to assume that because a child was taken in violation of a court order, they are somehow more traumatized than a child who by happenstance did not happen to be protected by such a court order at that time.

Also, that the provisions of the bill as written, state that it is a custody order that is entitled to enforcement under thus and such a satute. I think again, as Mr. Miltsch stated, I don't really think that is a judgment call that the Federal Government should make. I think that custody properly belongs in the local State courts which have access to the information pertaining to the child and again, it does tend to leave out the 70 percent of the children on whom there is no order.

We are also concerned about the definition in the civil portion of the definition of the home State as being the State in which the child has lived for 6 months without preceding the initiation of a legal action.

Again, in the cases where there was no previous award, we wonder if there is a way to define the home State as where the child lived 6 months consecutively prior to the abduction because there are obviously going to be some situations where there is more than 6 months that will have elapsed before the child is found.

Finally, and I don't really know the answer to this, but many of our member parents have asked whether this legislation will be retroactive, and because of the language in the definition being the concealment of a child or the restraint of a child rather than the actual abduction itself of the child, that is, of course, something that we and our victim parent members are very concerned about and hope the subcommittee will give close attention to.

Senator MATHIAS. I have been consulting with counsel here on both sides of me whose interpretation of the language of the bill would be that it does apply and will be effective even prior to the obtaining of an order.

If there is 6 months' residence that would give the parent the right to obtain an order which would then trigger the provisions of the bill.

Ms. GUMMEL. Except that in practice, in most States, unless the child is specifically in the jurisdiction, is physically in the jurisdiction, the court system itself does not usually permit for making an order on a child for whom the State does not have physical jurisdiction. We have checked with 42 States on this. That's the response we have received.

Senator MATHIAS. Well, that, of course, would be contrary to statute law in the 39 States that have adopted the Uniform Act at any rate. However, it is a point that we will look at very carefully. I appreciate your bringing it to our attention.

Now at the risk of being accused of being parochial, I have to give a Marylander the last word.

Mr. ECCLESTON. Thank you, Senator.

Senator MATHIAS. I take the curse off that a little bit by saying, Mr. Eccleston, that the one white light that you see behind you means that there is a rollcall vote on the Senate floor. This will have to be necessarily, beyond my control, very short.

Mr. ECCLESTON. I will, Senator. I just want to—much of what I have to say literally repeats what many people said here.

I do want to point out that on behalf of Parents Without Partners, the largest single parent organization in the world, and its 775,000 members, we do strongly endorse and heartily support this legislation. Obviously, this is not an absolute panacea, but it is a giant step forward. We would like to see S. 105 passed.

I can but add to, and this will be part of the record here, some of the horror stories you have heard. I have done so in the written text of my testimony. I do want to say just one thing and that is that in my opinion, it is really inconceivable that any one who has been witness to the terrible trauma inflicted upon our children by child snatching could fail to actively support the enactment of this bill.

Without the passage of Senate bill 105, there simply is no effective deterrent at the State or Federal level to prevent parents, pursuing custody by child snatching and without any fear of punishment.

Thank you, Senator.

Senator MATHIAS. Thank you very much for being here, Mr. Eccleston. Your full statement will appear at the end of your oral presentation.

Let me just ask you this question, Mr. Eccleston. Based upon the experience your organization has had, is it common for a parent to spend a large amount of money to locate an abducted child?

Mr. ECCLESTON. Oh, without question, Senator. Not only on behalf of the organization, but as the Senator may know, I have an extensive family law practice, my firm has an extensive family law practice in Baltimore. The legal costs are astronomical in this kind of a situation.

Senator MATHIAS. Whether the motive is love or revenge.

Mr. ECCLESTON. Whatever the motives.

Senator MATHIAS. The incentive to spend is there. Do you think the parent locator service would alleviate some of this financial hardship, particularly for a parent who has no large financial resources?

Mr. ECCLESTON. I think there is very little question about it, Senator. I don't see how this legislation can be at all effective without utilizing the parent locator service. You literally cut the heart out of the legislation if you take that way.

Senator MATHIAS. We thank you all for being here. I regret that our time has been shortened by the buzzer, but that is a higher law that this committee has to observe. So, I will have to go to the Senate floor for this rollcall vote. It seems the appropriate time to take a break. The committee will stand in recess until 2 o'clock.

[The prepared statements of Mr. Miller and Ms. Gummel, Mr. Eccleston, and Mr. Miltsch follow:]

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PREPARED STATEMENT OF CHILDREN'S RIGHTS, INC., PRESENTED BY ARNOLD I. MILLER, PRESIDENT AND RAE GUMMEL, VICE PRESIDENT

Our organization, Children's Rights, Inc., is the only national organization dealing specifically with the issues of child snatching and child restraint. Since our inception in March of 1975, we have counselled over 5,000 parents victimized by child snatching, as well as tens of thousands of other parents with restraint or other custody-related problems. We receive a daily average of 22 pieces of mail per day, as well as 16 telephone requests per day for assistance or information. We have responded to this deluge to the best of our ability as a nonfunded, nonprofit volunteer organization, with a one-person national headquarters staff (sometimes aided by student interns) and a contingent of 90 other volunteer chapter coordinators and "Lend an Ear" hotlines. We have been doing this work, which consists of telephone counselling (nonlegal), writing and distributing informative materials including a quarterly newsletter, providing technical assistance for local, Federal and even foreign agencies trying to deal with the increasing problems of child snatching and child restraint, and trying to help children who are frightened that these things may happen to them, for almost 5 years, from our home, all day every day. It has been exhausting, but it has been well worth the effort, because we have helped. But we are severely limited in the help we can offer, because of the very nature of the problems of child snatching and child restraint. Child snatching, in particular, is a most confusing and emotion-laden problem, and one which laws generally do not address. In recent years, there has been a noticeable interest shown by the American public and Congress, and we are heartened that at least preliminary steps are being taken to alleviate some of the grief and hopelessness of these situations.

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First, it is important to understand the difference between the two concepts of child snatching and child restraint. Without a complete separation of these two issues, the proposals of S. 105 are difficult to comprehend in their true light.

Child snatching is the wrongful taking and concealing of a child by one parent from the other. It not only describes the physical separation of the child from one parent, but the uncertainty of knowing if or when the child and "victim" parent will ever be in contact again. Our case files cover more than 5,000 children. Less than 150 of these children have been located to date. Of these, less than half have been returned to the parent from whom they were originally taken; in roughly one-quarter of the found cases, the "victim" parent is afraid to instigate any kind of action, for fear the child will be abducted again before they can get into court. This fear is based on the loopholes in current state and federal law in the United States, as well as the lack of international conventions, pacts or treaties to deal with these actions.

Child restraint is a similar but much less expensive action, both financially and emotionally. In restraint, one parent fails to or refuses to permit access to the other parent for communication and visitation with the child. Please realize that neither child restraint nor child snatching is a custodial issue—custody is a separate concept, dealing with court hearings and judicial decisions. Too many persons make the error of confusing child snatching and child restraint with the custody issue and become bogged down in an unnecessary plethora of court documents which have no real bearing on the issues of child snatching and child restraint. Indeed, our records indicate that in over 70 percent of child snatchings, there is no award of custody yet at the time of the abduction/concealment of the child.

This is one reason why the laws are so ill-equipped to deal with the problems which are built into the child snatching and restraint situations. In the states which address the problem at all, the tendency is to refer to taking the child "from the lawful custody," or "knowing such taking to be unlawful." This allows interpretation of statutes to mean that only the taking of a child from a parent with legal, court-ordered custody is applicable for the purpose of the statute. And that is exactly how those laws are being interpreted. We have many incidents in our files in which a parent with custody took the child, concealing him or her from a parent who had been ordered visitation rights; invariably, law enforcement officials have interpreted those takings to be "lawfull," because the abductor had court-ordered custody. And of course, in the vast bulk, 70 percent of the cases, these laws are totally useless; there was no custody decree; therefore, there was no violation of a decree, therefore no "unlawful" action took place. Imagine the frustration of a parent being told that if only they had obtained custody prior to the abduction, a warrant could be issued! As though the child is any less traumatized because he or she wasn't "covered" by a court order! It is a well-known fact that custody orders are always modifiable upon changes of circumstances, or if the needs of the child and/or the ability of the parents to meet those needs change. It therefore seems quite ludicrous that in a situation so traumatic and fraught with psychological and often even physical danger to the child, no assistance will be rendered unless the "victim" parent was previously given court-ordered custody of the child! Lest it sound as though a victimized custodial parent has nothing to worry about, however, let us continue the scenario. True, the noncustodial or precustodial parent walks away with empty hands and no argument. But the parent who had a valid and binding court order previous to the abduction may be only a little better off. First, if the child was abducted during court-ordered visitation, the authorities may decide that the abductor had "temporary" custody during visitation, and that therefore he or she was entitled to keep or take away the child! This may sound ridiculous, but it happens too frequently to be considered amusing. Even if the warrant is issued, it may be a great disappointment—most States consider custodial interference a misdemeanor, which means that (a) nobody in the issuing state is going to go to any trouble to look for the miscreant, and (b) not only will nobody in another State look for the abductor, but if found, it is highly unlikely that he or she would even be apprehended, much less prosecuted.

A question that comes up too often in our conversations with parents is "But isn't this kidnapping? Why won't the FBI find my children?" First, of course, it isn't kidnapping; not according to the applicable Federal statute, which states that a person is a kidnapper who "unlawfully seizes, confines, inveigles, decoys,

kidnaps, abducts or carries away and holds for ransom or reward or otherwise any person, *except in the case of a minor by the parent thereof.*" [Empasis added]

This parental exception has been law since 1934, and the United States has changed drastically in the ensuing 46 years. One of the most notable changes, particularly in the past 10 or 15 years, has been the rapidly-climbing divorce rate and, consequently, the increasingly common phenomena of child snatching and child restraint. These child-related offshoots of separation and divorce have caused great concern among professionals as well as among parents, teachers unable to search beyond their own boundaries for abducted children, even those and especially the children themselves. Because the individual States are unable to search beyond their own boundaries for abducted children, even those few States which have made child snatching a felonious action are stymied on the location aspect of child snatching. S. 105 proposes use of the Federal Parent Locator Service in this respect, and (based largely on the reported success by the State of California, which mandates use of its State PLS in child snatchings) we are very hopeful that the FPLS would have a similar rate of success. However, going back to our fictitious parent who has finally obtained (let's be generous) a State felony warrant for the abducting parent. Unless that parent was awarded child support and lives in California, he or she will now have to find the abductor and child. Alone. At great expense. And the search will probably, statistically, be a failure. Let's just make this a very bright and determined parent who decides to try for Federal intervention. Is it possible? Yes. Is it likely? No. Why? What enables the Federal machinery to swing into action in one case, and not in another? Who makes those decisions, and on what basis?

First, it must be clearly understood that, in the handful of cases the U.S. Department of Justice has investigated in the past few years, the charges were not kidnapping. As explained above, the current Federal law specifically exempts parents from prosecution under this title. However, Justice does have the authority to put out a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. Aha! This sounds like the perfect solution to the sad, broke and exhausted "victim" parent. But again, there is red tape enough to choke a horse: there are "requirements" before Justice will issue a UFAP in a child-snatching case. There must be a State felony warrant against the abductor (we've already discussed the likelihood of obtaining a warrant of any kind); the home State must be willing to extradite the abductor (an expense most States are loathe to guarantee); it must be shown that the abductor has left the original State (which is hard to prove if you don't know where the abductor is); and it must be shown that the child is in real physical or moral danger (very hard to prove without having the child and his or her situation evident). So much for the Federal UFAP-- and thus the use of the FBI to search for the child. So where does a parent turn?

Our organization has existed primarily as a clearinghouse of information on the child snatching issue. We have been contacted by more than three hundred Congresspersons and Senators in the past three years for assistance and information due to constitutents' concern and involvement with child snatching problems. These Members of Congress have tried to assist these victim parents in many and various ways, and their efforts on behalf of their constituents is to be commended. However, as all of these concerned national leaders have found, to their dismay, there is no help for these families. There is neither a locating agency, nor prosecuting system, nor social welfare organization, which can assist.

Each child snatching case is unique, but there are underlying similarities in the thousands of cases in our files that are quite significant. The chief similarities are that in nearly every case, the abducting parent takes the child out of State; in the majority of cases the parents are separated but no court custody award had been made prior to the abduction; the average adducted child is 3 to 7 years of age; usually the victim parent is unable to obtain a State felony warrant (or even a misdemeanor warrant) against the abducting parent.

When we put these factors together, we reach a very disturbing conclusion: Thousands of helpless young children are being abducted across State lines and concealed by parents who have little fear of being found or prosecuted.

The burden of location is left entirely to the "victim" parent—and a heavy burden it is. In checking our files, we find that it is not unusual for a parent to spend $10,000 to $15,000 per year on detective and legal fees and to still have no real clue as to the whereabouts of his or her child. Bear in mind that most of these parents will not find their children.

But the truly disturbing element in these cases are the children themselves: The "prizes" in the adult game of abduct-and-conceal. Usually taken during visitation or from a school, day care center or babysitter, they find themselves suddenly uprooted from their small world and thrust into very confusing situations. Our records indicate that most abductors stay on the move, often moving several times a year. The child does not get a chance to establish relationships in one community before being placed into a totally new environment This fragmented lifestyle eventually teaches the child not to form friendships or get involved in his community; indeed, the child has no community.

Few cases of child snatching have "happy endings" in which child is returned to his or her original environment; and the problems we have seen as direct results of child snatching are very disturbing. Most of these children have required psychiatric therapy because of disorientation and confusion; often the children are far behind in school; most have been told that the parent left behind died or "doesn't love you anymore." Sometimes they have been told that the other parent will hurt or kill them, and that they should run and scream if they ever see them.! It is obvious to us that these children are taken, not out of great love for the child, but to hurt the other parent.

That the child's welfare is of little concern to an abducting parent is evident in the fact that many children are taken at gunpoint or in violent confrontations in public places such as shopping centers; sometimes they are thrown into trunks of cars for the "getaway," or grabbed off the streets into speeding cars. These are not the actions of loving, mature parents concerned with the welfare of their children. Another indication of the vicious nature of these acts is the not-uncommon harassment of the victim parent by the abductor: calls and letters stating "You'll never catch me," "You'll never see the children again," et cetera. Often these messages are sent on Mother's or Father's Day, at Christmas, on the child's birthday, et cetera. It is clear to us that this kind of motivation is not in the best interest of the child.

We would like to illustrate three cases in which children were found in the past year, 1979. Hopefully, these cases will illustrate why we feel that education of the public and of persons in law enforcement, as well as of judges and social workers, is imperative.

Stacey Duncan was at her bus stop on May 3, 1979. When this 7-year-old was snatched by her father, it took her mother 16 days to get California to issue a felony warrant. It took much longer to find Stacey—3 months. Stacey was not found by a private detective, or through the State Parents Locator Service.

Stacey was found in a hospital. In a letter to CRI, Stacey's mother told us, "We were notified on the 12th of August that a little girl by the name of Connie West had been admitted into a Mississippi hospital on the 7th of August that could possibly be Stacey. Nineteen hours later, I was crying and praying for my little girl in an intensive care unit. She had been severely beaten and burned about her tiny body. She had to have a portion of her brain removed to save her life. The doctors still had no hope that she'd live. She had been in a coma but started coming out of it when I arrived. After a second brain surgery and a tracheostomy, Stacey is now off the critical list and in the hospital at home in California." In a subsequent newspaper article, it was reported that "Blows to Stacey caused extensive brain damage, requiring surgery that doctors believe will severely impair her intellect, sight and muscular control for the rest of her life." In a further letter to us in November, Stacey's mother said, "The Stacey we once loved is gone forever but the new Stacey is even more special to us. All those months we never lost our faith in God. He answered our prayers and brought her home. He's been showing us one miracle after another. She's now in a rehabilitation hospital and we're hoping she'll be home soon. She's been doing what doctors said was impossible."

This is the kind of situation that makes up the nightmares of parents victimized by child snatching, wondering whether a child will ever be found, or in what kind of condition.

My own case involves my son, Mason, now 10 years old. When Mason was 4½ his mother (who had custody) disappeared with him, in June of 1974. Because I was not the custodial parent, and even though a court order had been violated, there was no warrant to be had. Because I didn't know my former wife's address, I couldn't even get a contempt-of-court bench warrant! So Mason got placed on the missing persons list. Using all the information we had available, my family and I searched. We checked with his day care center, his pediatrician,

neighbors. No clue anywhere. I hired a total of four private detectives over the years to try to find my son. Because of the publicity of CRI, I got a lot of "false leads," telling me Mason was in Texas, California, Kansas, Canada, Utah. We know now that Mason was in Atlanta, Ga.; St. Paul, Minn.; Brighton, Boston and Worcester, Mass.; and Monsey, N.Y. At the time Mason was taken, he was forced to undergo a complete change in lifestyle—his mother had gone underground in a very common way: linking into a subculture which would protect her and permit her to keep her child as long as she followed their rules. Suddenly, this little boy who had been used to racially-mixed neighborhoods, who loved Big Macs, and who loved everyone he met—suddenly this child was thrust into an ultra-orthodox Jewish community, where he was taught to shun everyone who didn't look like him, dress like him, eat like him, think like him.

It pains me when Mason talks to me now, and I see and hear the prejudice and elitest self-esteem he has learned. The day I found him, although he recognized me, he wouldn't admit it because he thought the rabbis didn't want him to know me. We have chuckled over that incident recently, but at the time I was devastated to think my son didn't recognize me. Mason confided to me this past summer that the rabbis had told him that God had made black people black so that others could recognize them immediately as "bad." I was appalled. This racism was even more clearly demonstrated when Mason came to visit during his December school break. My stepson, 11, asked Mason what he thought of the hostage situation in Iran.

Mason said he hadn't heard much about it, and didn't think of it. Quinn gave his limited version of what was happening, and finished with, "Don't you think every American should be concerned and care about them?" Mason's reply was, "Are they Jewish?" It was obvious that he was willing to worry if they were Jewish, but if not, he couldn't care less.

The Rockland County Family Court in New York decided that Mason, since he is "used to" the ultra-orthodox lifestyle, should remain with his mother and visit with me and my new family on specific occasions. It hasn't worked too smoothly yet, but we are hopeful that as time wears on, some of the problems will get ironed out. In the meantime, although the court order requires it, Mason is getting no psychiatric or psychological counselling; I only connect on the telephone about one-third of the time; and my son is still being taught that I am not a good person. Finding a child is no guarantee that everything will be fine.

Indeed, according to a newspaper article from the Casper Star-Tribune of December 3, 1979, "The body of Christine Sutherland was found floating in the North Platte River near Glenrock early Sunday morning. The 9-year-old girl was abducted from her Casper home early September 16. Several duck hunters spotted her clothed body floating in the river just below the Dave Johnston Power Plant, said Jim Johnson, a Converse County undersheriff." When Christine disappeared, a child stealing warrant was issued.

There are those who claim that this is a problem that States can and should deal with on their own. Our response to this idea is an emphatic, "It can't be done." Even in States such as California and Wyoming, which have made a concerted effort to stem the tide of child snatchings, there are no real resources available for in-depth searches. In December of 1976, CRI contacted every State's attorney general in the United States of America, requesting information on current child snatching laws. The following excerpts from some of their responses indicate the inability of individual states to cope with their child snatching problem:

Alaska.—"District attorneys in Alaska currently do not prosecute for child stealing * * * because of the domestic nature of the offense. We encourage the efforts of your organization."

District of Columbia.—"The District of Columbia laws do not specifically proscribe childstealing. Childstealing can only be reached indirectly, e.g., through contempt proceedings * * *."

Delaware.—"In practice, prosecution * * * is rare (estimated three cases yearly) for several reasons. First, a custody order must have been obtained . . . without an adjudication, the Family Court is powerless to act. Second, when a child is taken out of state . . . in most circumstances jurisdictional problems prevent return."

Iowa.—"Concerning this problem * * * from a general standpoint I can assure you that it is one of major proportion. The occurrence of the problem in this state is widespread * * *.

"I receive an average of one or two calls per month * * * from broken hearted and/or outraged parents who have been victimized by these abductions and have suggested to each and every one of them that the only solution that I can foresee as being efficacious would be federal legislation so as to involve investigatory personnel at the national level * * * (T)he majority of these cases involve the crossing of states lines and, therefore, state legislation in the field is oft-times meaningless.

"(F)oreign jurisdictions do not honor a custodial award * * * from another state. All too often—which is to say in most cases the foreign state will make its own determination * * *.

"It seems grossly unfair to me * * * to permit a non-custodial parent to 'abduct' a child * * * take the child to a foreign state, and force the custodial parent to litigate anew the issue of custody * * *."

Kentucky.—"Kentucky * * * does not keep statistics * * * but does recognize custodial interference to be a problem, especially in those instances where the * * * party absconds with the child to another state."

Montana.—"We would agree with you that this has become a serious problem nationwide."

Nevada.—"In 1975 the Nevada legislature added a new section * * * which provides: 'Every person * * * who * * * detains, conceals or removes (a) child from a parent * * * is guilty of a misdeameanor.'

"To my knowledge, no one has been prosecuted under this provision since its enactment."

New Hampshire.—"* * * (A) proceeding for contempt is the only method in New Hampshire by which to resolve this problem and that as I am sure you are aware does not customarily allow extradition."

New Mexico.—"My answer is forced to be in the negative; at the present time New Mexico does not have a statute which addresses this problem."

Even the States which have made every effort to protect children from child snatching are unable to do much once the child is taken out of State. Even after filing a State felony warrant and entering it on the NCIC, the abducting parent is rarely found. If by some fluke the child is located, he or she has usually been with the abducting parent for a substantial length of time, and there is a tendency to favor the "local yokel," even though that parent wrongfully brought the child into the jurisdiction. It is at best a sad comment on our times that our judicial system allows a thief to keep what he has stolen.

One major legal obstacle would be eliminated if the child snatcher could be located before having the opportunity to establish jurisdiction in a new State or, as in my own case, before the child has become "accustomed" to the new lifestyle.

In those rare instances in which the child is located and returned (either through the courts or, more commonly, by resnatching), there is no guarantee that it won't happen again. We estimate that roughly one-fifth of the cases in our files involve multiple abductions.

Our concern today is that Congress now has a very logical and clearcut opportunity to eliminate the loophole in the current Federal kidnap statute which allows an estimated 100,000 children annually to be abducted and concealed. For years, our members (among them thousands of child-snatching and child restraint victims) have looked to Congress for a clear, meaningful and compassionate solution to the plight of the thousands of children placed in these untenable positions each year. It is our sincere hope that this opportunity for the Senate to act for protection of children and family unity will be given the in-depth consideration it so justly deserves.

We cannot stress too strongly that child snatching and child restraint are clearly abusive actions. In the small town of Tishomingo, Okla., in 1976, 3-year-old Cody Cain was killed when his father snatched him and the speeding car overturned in flight. Cody's father died the following day.

Although we are often asked how we could intend that parents be prosecuted for taking their children out of love, quite frankly we have never once found a case in which a child was restrained or abducted which has bettered the child's conditions. To the contrary, these children are taken from what they know as "home" and are forced to live like fugitives, usually moving frequently, and often having to adjust to new homes in the abducting parent's attempts to remain unfound. If love is the parent's true motive, he or she would find a way to work within the system for the child's best interest.

There is an abundance of psychiatric evidence that parental deprivation is emotionally crippling. Knowing that Congress has supported so many programs to improve the conditions of children in the United States, and the true concern you all feel for children in single-parent-home situations, we feel confident that you will give support to the Parental Kidnapping Prevention Act of 1979. CRI made proposals along these lines as far back as the summer of 1975, and we are delighted to have S. 105 and H.R. 1290 before Congress.

There are a few reservations we have about the Senate version of the act (S. 105) which we would like to express and explain here.

First, S. 105 addresses only those cases of child snatching and child restraint in which a custody order was violated. This is of great concern to us for two reasons: First, because over 70 percent of the cases in our files occur prior to issuance of a custody award, and second, because it requires a Federal agency to determine whether a custody order is valid and binding. It has been our impression that the Federal Government does not wish to become involved in making or enforcing custody orders, and essentially that is what S. 105 will require.

Additiontlly, we feel that consistency and uniformity in the enforcement of custody decrees is essential. This should be done as suggested in S. 105, by including a section under title 28, chapter 115, section 1738, which would call for full faith and credit in custody among the individual States. With the inclusion of this section, the common practice of "court shopping" should be greatly reduced. Coupled with the bill's criminal provisions, this provision would largely eliminate the temptation to abduct the child in hopes of a more favourable custody decision in a new state (even though this does not appear to be a major motive for child snatching). It should be noted, however, that as presently written, the "home State" shall be the State in which the child has most recently lived for 6 consecutive months (or since birth, if under 6 months of age). Because it may realistically take more than 6 months to find the child, this could give jurisdiction to the fugitive State. We feel that this is in conflict with the basic intention of the Parental Kidnapping Prevention Act, and would like to suggest that this specific clause be changed to define that the "home State" shall be the State in which the child has most recently lived for 6 consecutive months, except that in the case of child snatching or child restraint the "home State" shall be the State in which the child has most recently lived for 6 consecutive months prior to such abduction or restraint. In this way, we feel that parents and child alike benefit.

In the spring of 1977 issue of CRI's newsletter, "Our Greatest RESOURCE * * * Our Children," it was pointed out that what was needed to deal with the child snatching problem was a multifaceted proposal which would deal with custody jurisdiction and criminal prosecution for child snatching. The Parental Kidnapping Prevention Act of 1979 does just that; we hope sincerely that the Senate will take this opportunity to resolve the very common and very complicated problems of child snatching and child restraint.

We are appending copies of several articles which have appeared in "RESOURCE" over the past 5 years, which we hope will be of interest and assistance.

In conclusion, we would like to restate that the foregoing is a very brief description of some of the problems involved in child snatching and child restraint cases, as well as a discussion of some of the farreaching results that these actions have on children. Please bear in mind that thousands of families are adversely affected by these actions each year, and that the only logical solution to them is comprehensive federal legislation to guard against child snatching and child restraint, and to facilitate the enforcement of state custody awards. But mostly, please keep in mind that while professionals and parents have a hard time untangling these issues, the real victims are the ones least able to deal with such problems—the children.

CRI receives letters from young children who are worried, even terrified, that they may be victims of child-snatching. In closing, we would like to submit one such letter from a 9-year-old boy in Mississippi:

"Dear Children Rights, I would like to know how old you have to be to decide whom (mother, father) you want to live with.

"And if you decide go with your mother what if your father tryies to take me away from my mother what can I do stop this?

"Please write to me, Mickey."

PREPARED STATEMENT OF ARCHIBALD ECCLESTON

My name is Archibald Eccleston. I am legal counsel for Parents Without Partners, Inc. and a senior partner in the law firm of Eccleston and Seidler located in Baltimore, Md.

Parents Without Partners, is a nonprofit, charitable, educational organization comprised of approximately 175,000 members, all of whom are single parents. On behalf of Parents Without Partners, and as an attorney with an extensive family law practice, I appreciate the opportunity to address this subcommittee and to lend our support to Senator Malcolm Wallop's Parental Kidnaping Prevention Act, Senate bill 105. "Child snatching" is horribly damaging emotionally to those children subjected to this traumatic act and quite often physically damaging. The magnitude of the phenomenon is, I suspect, much greater than many people believe. The Library of Congress estimates that more than 25,000 child snatchings occur annually. Private groups who monitor child snatchings estimate that as many as 100,000 occur annually.

The Uniform Child Custody Jurisdiction Act, which is now the law in most of our States, is a step in the right direction, but obviously insufficient to resolve the problem. As someone who is familiar with child snatching, both as legal counsel for the largest single parent organization in the world and as a practicing attorney involved in a number of these cases, I have been actively interested in all legislation concerning child snatching. I truly believe that Senate bill 105 is the most comprehensive legislation on this subject introduced to date. To review the precise proposals in Senate bill 105 with this subcommittee would be like carrying coals to New Castle. However, the provisions which bring the Parent Locator Service into play; the utilization of certain portions of the Uniform Child Custody Act; the insistence upon full faith and credit for state child custody determinations; and the addition of the proposed section 1203 to the "Lindbergh Law" (title 18, United States Code, section 1201 et seq.) constitute the proper coalition of factors required to properly address and resolve the problem.

With the increased occurrence of divorce in our country, the problem is an ever-increasing one. In a domestic case my office handled, I witnessed the unfortunate spectacle of a 6-year-old boy being hospitalized with bleeding stomach ulcers as a result of his being snatched back and forth between warring parents. Multiply this episode thousands upon thousands of times each year and you will have an approximation of the severity of this horrendous, national social problem.

In order to give the subcommittee an idea of the roadblocks and frustrations encountered by a parent whose child has been taken, I would like to cover some of the more salient points of a copy of a letter I received recently from a mother in South Dakota requesting help. Her child, a boy of 8 years of age, was spending a regular 2-day visitation period with his father which commenced on May 25, 1979 and ended May 27, 1979. On May 28, 1979 when the child was not returned, his mother frantically contacted relatives of her ex-husband in Nevada, California, and Colorado. They had not heard from her ex-husband at that time. On further personal investigation she found that he had quit his job, moved from his apartment, and cancelled his phone service—all on May 25, 1979; the day he left with their son. On May 29, the mother contacted her attorney to determine what steps could be taken. She was informed by her attorney that he could not be of any assistance and that she must solicit the assistance of the state authorities. She then proceeded to contact the State's attorney's office where she was advised that they would "look into it". They gave her very little encouragement, stating that it was strictly a civil case. On June 5, 1979, she filed a missing person report with the Sheriff's office and with the police department. She also filed reports with the Department of Social Services and Child Custody Agency. In early June, on her own, she sent change of address cards to her ex-husband's creditors hoping she might trace his whereabouts in that fashion. She did finally trace her ex-husband as far as Utah and forwarded that information to the State's attorney in South Dakota.

On June 27, she wrote the Governor and was informed that this matter was not under his authority. The Governor forwarded a copy of her letter to the State attorney general. A letter from the attorney general advised her that he, too, was unable to help and he forwarded a copy of her letter to the county state's attorney. The mother then contacted her U.S. Senator who replied and informed her that his staff had contacted both the Federal Bureau of Investigation and the South Dakota Division of Criminal Investigation. On July 19, she again

contacted the State's attorney to inquire what could be done. He suggested that she contact her local State Senator regarding State legislation. She was then advised by an attorney of a South Dakota law which had been passed on July 1, 1979 regarding child snatching. She was subsequently advised that the law did not apply to her since it was passed on July 1, 1979 and her son was taken on May 25, 1979. In addition, because the law was applicable only in situations involving noncustodial parents who take or entice away their unmarried minor children from the custodial parent without prior consent, she was advised that it would not apply to her case because her ex-husband merely failed to return the child after prior consent.

On August 17, the distraught mother, on her own, contacted the schools in the area in the belief that they might have received requests for her son's school records from other schools. She contacted her son's doctor in the event that his health records had been requested. She contacted the register of deeds in Rapid City and Pierre in the event they received requests for her son's birth certificate, believing that these might be required if her son were enrolled in a new school.

On August 21, 1979, again on her own, she completed and mailed 483 "reward posters" offering $1,000.00 reward for information regarding her son. She sent these to people involved in her ex-husband's usual occupation, elementary schools, unions, State departments of education, sheriff's offices and police departments in all areas where her ex-husband had relatives.

On August 28, 1979, the Las Vegas Police Department contacted the Rapid City, South Dakota Police Department and the Pennington County sheriff's office to determine if there was a warrant issued for the ex-husband. They had received a poster from a school and were investigating. When they were informed by the sheriff that there was not a warrant issued, they advised that there was nothing they could do. Her local State's attorney told her he would "continue checking into the matter".

On August 29, she received a telephone call from a woman who worked in Las Vegas with her ex-husband, and who was interested in the reward. The mother once again contacted the sheriff's office and the State's attorney's office for help. She was informed that nothing could be done and it was up to her to "steal" her son back. The following morning the mother and her brother flew to Las Vegas only to learn that her ex-husband had seen a poster that day and had left the area, possibly for California.

On September 4, 1979 she contacted a judge in South Dakota and asked that a warrant be issued for her ex-husband for contempt of court on the basis that her ex-husband had been enjoined prior to the May 25th visitation from removing the child from the State of South Dakota. The judge advised her that because her ex-husband was out of the State that he could only issue an "immediate custody order".

On September 5, 1979 the mother prepared and mailed an additional 250 posters to California. On September 18, 1979 a call was received from a woman in California who advised the mother that her ex-husband had been staying with her, was carrying a gun and using hard drugs. She was advised that her son was "emotionally disturbed and neglected, totally withdrawn, would not play with other children and sits and stares as though he is hollow". The mother again contacted all of the authorities, the State's attorney, the sheriff, the police department, the Department of Social Services and the Federal Bureau of Investigation as well as the local Judge. Again, she received the same answers, "sorry, there is nothing we can do".

I quote for you the last paragraph of that mother's letter:

"* * * [t]he anger and frustration from being bounced around and told *SORRY*, over and over again are nothing compared to the very real pain, anguish and torment that I feel without my son. It is an agony that is tearing me to pieces. I have obtained another 500 posters and I will start again. Someday, somewhere I am going to find my son and have him home again. I will never quit. I have had to work two jobs for the past three months to pay for attorney's fees, posters, and wasted trips out of state. Perhaps by keeping so completely busy I might just keep from going insane. Thanks for listening to my story. I cannot truly understand that any human being should have to go through such a nightmare when proper legislation could serve to curb and correct child snatching."

She concludes by asking for help and seeking legislation so that all children everywhere in single parent households may live normal, decent lives without these traumatizing experiences.

The facts in this case are not atypical, but represent cases which are occurring daily in our country. For myself, for Parents Without Partners, the organization I represent, and for all parents and children who have been subjected to the brutalizing and degrading act of child snatching, I earnestly request your most serious consideration and support for the passage of this important legislation. As Senator Wallop so aptly stated, "The price of waiting is too high in human terms for our legislators not to take the initiative in finding a solution to the child snatching problem". I believe that Senate bill 105 represents that solution.

It is inconceivable that anyone who has been witness to the terrible trauma inflicted upon our children by child snatching could fail to actively support the enactment of Senate bill 105 and attempt to bring a halt to this practice. Without the passage of Senate bill 105, there simply is no effective deterrent, as either the State or Federal level to prevent parents pursuing custody by child snatching without fear of punishment.

PREPARED STATEMENT OF HAROLD H. MILTSCH

I welcome this opportunity to testify today before the Criminal Justice and the Child and Human Development Subcommittees regarding the Parental Kidnaping Prevention Act of 1979.

Unfortunately, my wife and I know firsthand how badly such legislation is needed. In 1977, my wife and I, and even more especially, our 7-year-old son, became victims of parental kidnaping when he was stolen by his natural father.

There was absolutely no reason why we should have been prepared for such an eventuality. There had been no domestic quarrels. And the court had granted visitation privileges that had seemed to be satisfactory to all parties.

Our first realization that our child had been kidnaped came when he was not returned by the agreed-upon time. Subsequently, a note left behind proclaimed the harsh reality that we were quite possibly never to see our son again. I assure you, your worst imaginings cannot conjure up our feelings at that moment.

We moved swiftly—but just as swiftly learned the crushing truism that the avenues for interstate law cooperation were very limited. In desperation, we pursued the only apparent course open to us—the hiring of private investigators. $10,000 later, we were virtually where we had started. Actually, we were luckier than most parents who find themselves victims of a parental kidnaping.

For one thing, our local district attorney and his staff, as well as our local police, were determined to locate our child. For another, I was able to apply my marketing communications expertise in the form of a mailing to schools in the areas we now suspected our son was being kept. Ultimately, the doggedness of all concerned resulted in the return of our son.

One fact loomed crystal clear as details on the kidnaping plot became available. Our son's natural father was strongly influenced by the belief that the police would not investigate. I realize that my son's return was only achieved through a combination of luck and dedication beyond the call of duty on the part of some local law enforcement officials.

And that many or most other parents going through the same ordeal are unlikely to have their child returned under the conditions that prevail today. I resolved to do something about the situation. And, after much research and discussion with law enforcement officials, private investigators, victimized parents and other concerned parties, STOP PARENTAL KIDNAPING was organized.

The purpose of the organization is to provide positive assistance to victims of parental kidnaping. We are attempting to devise techniques that represent practical alternatives. Communiques from and conversations with Federal law enforcement officials, psychologists, local law enforcement personnel and, of course, victimized parents, leave no doubt that parental kidnapings are today running rampant in our country.

The anguish of the parents and irreparable emotional destruction of the kidnaped children is pitiful and unacceptable. Everybody agrees with the situation, but seemingly no one can help!

The efforts of our organization to find kidnaped children through the *Return Our Children* newsletter represents a very small drop in a very large bucket (Although, at least it represents *hope* . . . something desperately needed by victimized parents who have exhausted their financial and emotional resources

in vain efforts to locate and get their children back.) It is S. 105, the Parental Kidnaping Prevention Act of 1979, that offers the kind of help and hope that is of a size and dimension to be meaningful.

Perhaps the greatest asset that this bill provides is: It makes parental kidnaping a violation of a Federal criminal statute. This, in itself, will undoubtedly serve as a deterant. Lawyers will no longer be tempted to advise clients to involve themselves in kidnapings. Parents who are considering such a crime may be awed by the fact that Federal mechanisms such as the FBI will be moving against them. Although Federal legislation and intervention through Federal agencies such as the FBI provides an *immediate* solution, still other techniques can be implemented on a long-range basis, thereby alleviating total "big brother" reliance on federal laws.

Victimized parents who have been fortunate enough to be reunited with their kidnaped child undoubtedly find themselves awakened many nights by their child, deep in a nightmare, screening: "Don't take me; please don't take me." The horror of a kidnaping remains with that child for the rest of his life. These horrors and trauma must be explicitly detailed so that everyone who is involved in a parental kidnaping can come to a clearer understanding of how devastating the crime really is.

Our organization, STOP PARENTAL KIDNAPING, intends to launch an educational program via our newsletter, news releases, magazine articles, television appearances, and other media. But passage of S. 105 is a giant step forward that must become law in order to put teeth in our efforts. And in the efforts of all others who would seek to stop—or at least slow—the hideous and lasting emotional damage perpetrated every time another child is kidnaped from his home and loved ones.

[Whereupon, at 1:01 p.m., the hearing recessed to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator MATHIAS [acting chairman]. The subcommittee will come to order.

For the benefit of those in the room who are not residents of the Washington metropolitan area and who may not be familiar with the customs of the natives here, the delay in our resumption, which is supposed to have been at 2 o'clock, does not result from the fact that three martini lunches are served in the Senate but from the fact that at precisely 2 o'clock we had a rollcall vote followed by another one at about 2:20. So these were unavoidable delays. I apologize for them, but they were beyond the competence of the Chair to avoid.

Now our next panel will include Mr. Donald E. Clevenger, of Fathers United for Equal Rights and U.S. Divorce Reform; Mr. Tom Alexander, Jr., national president, Men's Equality Now of the USA, and executive director of Male Parents for Equal Rights and Mr. George F. Doppler, national coordinator, National Council of Marriage and Divorce Law Reform and Justice Organizations.

PANEL OF MALE RIGHTS OFFICIALS:

STATEMENTS OF DONALD E. CLEVENGER, FATHERS UNITED FOR EQUAL RIGHTS AND U.S. DIVORCE REFORM; THOMAS ALEXANDER, JR., NATIONAL PRESIDENT, MEN'S EQUALITY NOW OF THE U.S.A., AND EXECUTIVE DIRECTOR, MALE PARENTS FOR EQUAL RIGHTS, AND GEORGE F. DOPPLER, NATIONAL COORDINATOR, NATIONAL COUNCIL OF MARRIAGE AND DIVORCE LAW REFORM AND JUSTICE ORGANIZATIONS

Mr. ALEXANDER. My name is Tom Alexander. Since people often ask why I have the accent I have, so as not to confuse anybody, I will

explain it very quickly. I was born in California, but I was raised in England, and I now make my home in the State of Delaware.

I kind of feel that I am in much the position of many of the parents of whom we are speaking today, inasmuch as the factors that I would be required to do something of value was thrust upon me at 2:30 yesterday afternoon. This is about the situation that most of our parents find themselves at any time. The expectation of having one's children torn from one's bosom is not there in the average individual as they make their home within the United States.

The problem as I have been able to observe it as the executive director of the local organization and as the national president of some 230 affiliate organizations across this United States is that where as we believe that we are living in a society which truly recognizes our rights to life, liberty and the pursuit of happiness, we find we are not because all the things that are of value to us, our home, our employment and our children, are subject to be suddenly snatched from us and too often by that very person in whose bosom and trust we have resided for many a year.

The difficulty that I have, of course, is to try and bring to life to you the problems that I have seen on a day-to-day occurrence. While there are many opportunities to pick at the precise specifics of the bill, it is the heart and essence behind it as a natural fact people who are being abused on a day-to-day basis. Now those people that are being abused are not merely the children, but also the parents, many of whom who are Vietnam veterans who have come to me and said, "What was I fighting for?" I question what they were fighting for if their very soul has been torn away from them. A person who steals my purse steals nothing but money. A person who slanders me steals my honor. But they who steal my children steal my very soul, my future, my inheritance, or my progeny.

I don't wish to take too much time, but let me quickly recite a few facts with respect to the Uniform Child Custody Jurisdiction Act.

I am delighted to see that 39 States have adopted the act, but you would be amazed at the number of letters that I received in my office weekly, and the telephone calls that I receive weekly from lawyers and others who ask what to do when a child has been snatched, whether it is the client, or their own child or their grandchild or their niece or whatever it is. The simple fact of the matter in the one landmark case that finally made it into the Federal court, the case of Olivia Ann Katage versus Davian S. Katage, with reference to the child, Bitter Katage, age 3, the U.S. District Court, Eastern District of New York, finally recognized that there might be a problem that they should be addressing.

The only reason that it became a case for the U.S. district court was the simple fact that the child had been taken from New York over to Yugoslavia. But what is more interesting is that upon research of the record, we found that the child had in actual fact lived all its life in the State of New York, and on July 1, 1977, been taken to the State of California. Now remember that both the State of California and the State of New York had adopted and had at that time adopted the Uniform Child Custody Jurisdiction Act.

The simple fact of the matter was that within 45 days Mrs. Bitter had filed a petition for custody in the State of California and in less than 2½ months, the date is September 26, 1977, the State of California had awarded custody to the mother, Mrs. Olivia Ann Katage. Now this is an example of how States do not follow the Uniform Child Custody Jurisdiction Act.

On the other hand, I do have a situation where the State of California does follow it. It depends who is down there to enforce the Uniform Child Custody Jurisdiction Act. This one happened to be the case of a fellow by the name of Ken Taylor who had received custody in the State of Delaware. The child had been taken to the State of California. We took the custody order of the State of Delaware to California, registered it in the County of Los Angeles. We took it over to the sheriff's department and showed them the order, gave them our indication and best judgment as to where the child was and by 4 o'clock we had that child back.

Now, I would like to make a comment with respect to that child. The child was 5 years of age. As of 5 minutes of leaving the sheriff's substation, that child said, "You know something, Daddy? This means I get to choose who I shall live with." These children are not insensitive. They have a better concept of justice, it appears to me, than the FBI, or HEW has, from the remarks that they made earlier today.

But what is even more interesting is that by the time we took the child back to the State of Delaware, 10 days after we had recovered the child, the State of California filed a reciprocal enforcement of support act against the father. It was 2 months later that he finally had to go to court to say to the court, "Look. I have my child. Why is the State of California asking for support?"

The reason I tell that story is because there is one thing that is being overlooked along the way. The subsidizing of child snatching is actually occurring through the welfare departments, because if a parent realizes they can snatch a child, go to a foreign State and go on welfare as this woman did, and as in so many cases that I have been involved with, Jim Mullican, from Maryland to the State of Florida. We were down there within the day of the child arriving there. The State of Florida enforced the order in the County of Broward. I forget the town name there now. But we found out that when we picked the child up, the child was in the care of a distant person and the mother was actually out at that time applying for welfare.

In the case of a young fellow by the name of Tom Mullins, there was actually a custody petition that had been filed in the State of Delaware. The father had responded and was contesting custody. Before the hearing was heard, Mrs. Mullins took the child to Oklahoma—Colgate, Okla. In that State the judge said, "Well, since the father went out there to take interest and to see how his child was, the judge said they would have a custody hearing as they were both there and promptly awarded custody to the mother." In addition to that, he ordered $300 in support. That mother also was on welfare by the time he got out there to pick the child up.

Now the simple fact of the matter is that the Uniform Child Custody Jurisdiction Act by itself is not sufficient. We do need Federal help. We must have Federal help, Senator. I hope you can convince the

rest of the members of the Senate and the rest of the Members of the House that we need this help now, not next year, the year after, but today.

But there is another area that your bill addresses which is most essential and that is the consideration that when a parent crosses a State line that visitation shall not be denied. The denial of visitation, however, is the area that causes the greatest degree of trauma to children. These children are entitled to know that their parents truly do love them and want to see them.

Let me recite to you a case which is the case of Edward Lawrence, coming out of the State of New York. This gentleman was divorced by his wife when she removed the children and went to the State of Florida. The child, there are two children involved, a Steven Andrew Briggs and Elizabeth J. Briggs, or more correctly, Lawrence, since he is the natural father and they were married at the time of the birth of the child. Our problem there is that although there was a custody order and visitation orders, the mother has absolutely denied visitation. I am aware of this through my own knowledge and I was in Sarasota when the father attempted to visit.

I am also aware that there was an attempt to obtain an attempted kidnapping warrant against myself when I was simply there to make sure that the child or children were indeed alive. However, in this particular case, the State of New York has a statute which says that the denial of visitation shall be sufficient to limit the payment of support. As of June 28, 1979, there was $2,436.16 in escrow in the State of New York. But I was informed just the other day, by Mr. Ed Winter, one of our attorneys, in Florida, that the judge in Sarasota has since awarded adoption rights to the mother's present husband.

Now, sir, I say to you that if we can deny visitation rights and we can ignore the rights of a parent to that extent, then we are in desperate need of the Senate bill 105. I don't feel that I should take too much of the time of the committee, because I am sure that they have had plenty of examples placed before them. However, I would like to offer two more.

Don McCready is a gentleman who had visitation rights in the State of Tennessee. The mother disappeared and was eventually found in the State of Pennsylvania. Over 10 years he was denied access to his children. Those children today are approximately 19 and 13 years of age. But he was assisted, incidentally, by the mother's second husband. The only reason that man has visitation at all with his children is because that woman's second husband came to me for help and when I found out what the situation was, I asked for his permission to get in touch with the father.

The father didn't know that h dren were living a mere 40 miles away. The father was by that time in the State of New Jersey. Now the second husband is also having trouble visiting with this child. I can't help but feel that——

Senator MATHIAS. With the same wife?

Mr. ALEXANDER. With the same wife. I can't consider that is poetic justice. You see——

Senator MATHIAS. Poetic injustice.

Mr. ALEXANDER. Poetic injustice, yes, sir.

CONTINUED

1 OF 2

You see, one of the problems that I run into, and I see so often, is that we as men very often enjoy mounting upon the white horse, seizing our white shield and galloping off in the defense of women. It is fantastic for our ego. Even I stop and help women on the road who have a flat tire. I struggle hard not to. [Laughter.] The simple fact of the matter is that sometimes we abuse what is the intent of the statutes. I have seen this happen in talking to the various staff members. I understand that there is an attempt to limit the penalties or even to totally remove the penalties from this bill, but those penalties are essential if it is to be something more than just few words of wisdom written upon a piece of paper.

Senator MATHIAS. Those provisions are in the nature of redemption after there has been——

Mr. ALEXANDER. I agree. I am very glad to see that there is an opportunity to purge one's self so that we don't see too many men and women in jail. Because even though in the State of Delaware where we have the critical spacing for men, I think that if this act were to pass, we would find we would have to build a new prison for women also.

The other case I would like to give you, sir, is a case of David Recosh. In actual fact, his correct name is David Clavens Recosh. If ever a man was liberated, this man is because he adopted his wife's former maiden name and hyphenated to his self.

So, I am waiting to see his petition for divorce when he will be allowed to take again his bachelor name.

He has two children, age 1½ and 4. Although he makes his home in the State of New York, in the city of Buffalo, and incidentally, as a research biologist there, the simple fact of the matter is that the mother managed to get him served with a separate maintenance and custody order in the State of New Jersey. The day that was served, she moved out of New Jersey and went down to Maryland. We chased through three States to find this woman again, and when we closed close to her place in Charles County, in Maryland, your State, sir, although we had registered the Uniform Child Custody Jurisdiction Act in Cecil County, we took it down to Charles County and although the law in the State of Maryland says that it shall be registered in any State, we were unable to get the sheriff's department to act without first going to court to seek a judge's approval to seize the child and honor the order of the State of New York.

In the process of attempting to get the ear of the judge, lo and behold, our bird had flown again. She was in Bergen County, N.J., by the time we caught up with her and we are fortunate that on this particular instance, in the first case of a Uniform Child Custody Jurisdiction Act placed in the State of New Jersey, she was seized by the heels as they say.

Senator MATHIAS. That shows what happens to people who leave Maryland, particularly Charles County, Md. [Laughter.]

Mr. ALEXANDER. I believe, sir, that there are a couple of small items that should be mentioned and that is this—and I realize that you are an attorney, sir—but I have heard——

Senator MATHIAS. I used to be.

Mr. ALEXANDER. Used to be. I have been asked by my bar association why I don't take the bar exam, but I have so much fun throwing stones at them.

I have noticed that lawyers and judges essentially have encouraged child snatching. I hope that by making it a Federal offense that we may at least prevent the lawyers from encouraging child snatching, and perhaps we might even encourage judges to cease recommending, "Well, your only solution." Incidentally, in the State of Virginia, in a case of Steven Malloy, where we brought an order from the State of Massachusetts and asked the judge in Falls Church, and my colleague here, Don Clevenger told me which judge to go see in the hope that we could enforce the order. He told me after 45 minutes, "Well, Mr. Alexander, I am terribly sorry we can't help you, but I am sure you will find a way."

The answer to that was, yes, we did find a way. We seized the child 3 hours later and sweated it out while we were waiting to cross the bridge at Rocky Point, Md., into Maryland.

Senator MATHIAS. Point of Rocks, Md.?

Mr. ALEXANDER. Point of Rocks.

Senator MATHIAS. Point of Rocks.

Mr. ALEXANDER. The bridge was being repaired at the time, sir, and we were in high dungeon when we heard the sound of a siren which eventually turned out to be an ambulance. But I would like to point out that in every instance that I have personally recovered children, except one, the mother has found that the desire to settle in some foreign, distant State dissipates and they are quite happy to return to the area which was formally known as their marital home.

I thank you for your time, sir.

Senator MATHIAS. I might say that you can feel lucky you weren't living 100 years or so ago, because at Point of Rocks, Jubal Early and the Confederate cavalry passed freely without using the bridge.

Mr. ALEXANDER. Oh, I would like to add one other point, if I may, since we are talking in terms of history.

Senator MATHIAS. Would you mind holding that point because our time is limited. Let me go to Mr. Doppler and then we will come back to you. I have some questions for you.

Mr. DOPPLER. I am George F. Doppler, of Broomall, Pa., national coordinator of the National Council of Marriage and Divorce Law Reform and Justice Organizations which is a coordinating effort for 165 law reform, men's rights, and fathers' rights organizations throughout the Nation. I am director of my local organization, the Family Law Reform and Justice Council of Pennsylvania, State legislative chairman for FACE, Father's and Children's Equality and Pennsylvania State legal research coordinator for Parents Without Parents, Inc.

Senator MATHIAS. Mr. Doppler, I don't want to interrupt you. Your statement will appear in full in the record at the conclusion of your oral statement. If you could summarize it for us, I think we would——

Mr. DOPPLER. Well, it is rather difficult for me to do at this point. This will not take too long. May I read this then?

Senator MATHIAS. Yes, if you will.

Mr. DOPPLER. I am a 13-year divorce reform, men's rights veteran with experience or association with several thousand domestic relations cases, most of this concerning parent-child problems.

I am not a parent who has had his children snatched from him, so perhaps I can and do see this problem from a different angle. I have had my two oldest children turned against me, not seeing one for 7 years and the other for 9 years. So I do know and understand what it is like not to have the life of your children.

I am not satisfied that S. 105 is the answer to this problem and I would like to direct my presentation to factors around child snatching. To me, child snatching is only a superficial surface problem with the real problem being child custody practices as they are applied in the United States. Take a judge who has a reputation as an outstanding jurist in other areas of the law, put him or her into hearing domestic cases and most do a complete flip-flop, many acting like stark-raving maniacs.

The first leg of this problem lies with the county judge who in most cases is generations behind his or her approach to family matters; most likely has his mind made up in advance before he even enters a courtroom. From a male point of view the county courts have a notorious and infamous reputation. Most child custody court sessions are a farce, just window dressing to make the male parent think he has had his day in court which in most cases is a sham. I would like to read a quote from the "Minnesota Family Law Practice Manual" which is used to direct attorneys in that State.

> Except in very rare cases the father should not have custody of the minor children of the parties. He is usually unqualified psychologically and emotionally; nor does he have the time and care to supervise the children.
>
> A lawyer not only does an injustice to himself, but he is unfair to his client, to the state, and to society if he gives any encouragement to the father that he should have custody of his children.
>
> A lawyer who encourages his client to file for custody, unless it is one of the classic exceptions, has difficulty collecting his fees, has a most unreasonable client, has taken the time of the court and the welfare agencies involved, and has put a legal burden—and has put a burden on his legal brethren.

While the State of Minnesota might be so bold as to put this into writing this is the attitude of just about every county court in the United States. Just look at the child custody awarding statistics between parents and you will see that in some States fathers are awarded custody in some 2 percent of the cases to a high of 6 percent and this high is only that great because some mothers do not want custody. These statistics alone should tell the world the child custody system in the United States is sick, and they do.

In S. 105, there is a continual referral to the custodial parent who in most cases will be the female parent who obtained legal custody through an unjust system. One of the goals of the Idaho Women's Commission for 1980 is: "Prohibit granting custody of children under any circumstances to fathers." With conditions like this, the attitudes of our society like this, many fathers are not going to stay around and wait for some court to take their children from them, they are going to take their children and run. Also, there are many fathers today who just will not put up with seeing their children left in an undesirable environment, court ruling or not.

Out of my experience in domestic relations cases, I have come to learn that there is a certain group of parents who think that once their marriage has turned bad the other parent is to have nothing to

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do with the children except to send money. When this is the female parent she has two legal means to enable her to move to any part of the United States and still collect her child support. The two legal instruments I am referring to are: The Uniform Reciprocal Enforcement of Support Act and the Federal Enforcement of Support Act.

I can think of no two other legal instruments which are encouraging child snatching and so effectively destroying the association with the other parent.

I have been following proposed remedies to the child snatching problem for some time. Over the years, I have read some rather extreme reactions to deal with this problem. I have great reservations if S. 105 will really be effective in dealing with this social problem or is it just going to be another one of those "sweep it under the rug" type legislation?

I would like to bring to your attention just two cases of which I have knowledge:

A 4-year-old boy was held over an open, lit, gas jet by his mother burning off his nose, his eyes so badly burned the lids were gone, his mouth burned to a continuously open position, the whole face a solid mass of scar tissue. A doctor the father took the boy to said he didn't see how the child had kept from breathing so long, for had he, the heat would have burned his lungs and killed him. The judge still awarded custody to the mother along with the other children.

Let me ask you, if you were the father in this case, would you snatch these children and run? In May of the year a young boy was injured in a fall from a swing set breaking off four front teeth. The mother refused to take the boy for proper medical attention to remove the broken roots.

In September the father took the child from the mother, found him to be suffering from badly infected teeth, malnutrition and what appeared to be physical injury to his sex organs. It was later proven that the mother had allowed access of the boy to a homosexual. The mother filed suit for custody and it was awarded to her by the local county judge. The father refused to turn over his son to such a detrimental environment, so the judge placed the father in jail until he agreed to waive his custody rights pending the outcome of an appeal. The judge said he intended to force the father to turn over the boy to the mother regardless of what anybody says.

After spending 2 months in jail, the father gave in and told the court authorities where he was hiding the boy, and they came and took the child back to this mother. If you were the father in this case, what would you have done? Should S. 105 become law the caseload could be staggering. I would like to present to the committee some of the State level steps we are proposing in Pennsylvania to deal with this problem—reform legislation proposing:

First: A determination of custody made before the setting or awarding of any child support.

Second: Upon the separation of parents with a child or children under 18 years of age, the parent having possession of a child shall be required to institute proceedings to determine custody, after the 21st day of separation, but before the 46th day of separation.

Third: Legal jurisdiction in determining child custody shall be the county or adjoining county within the State, of the marital domicile at time of separation, unless both parents have left that area. The archaic common law practice, jurisdiction lies wherever the children are has to be ended. This has been a major factor in child snatching and custody shopping. Possession of the child or children has been too powerful a weapon and it has got to be stopped. The place of marital domicile will be unchanging, definite and can be fixed.

Fourth: The nonresident custodial parent shall have the right to be informed of the living place, address, and telephone number of the child or children from all available records.

Fifth: Then we have great interest today in joint custody and co-custody arrangements which many parents are willing to go along with and want, but is being looked upon with great disfavor by most county judges. We are out for better custody arrangements, and crusading against the use of sole custody.

Also, in Pennsylvania, we have an interfering with custody law which is a criminal act that went into effect June 6, 1973. We expect to make greater use of this law also using it in violation of visitation time which in Pennsylvania is custodial time. We are part of the States which have passed the Uniform Child Custody Jurisdiction Act now joined by 40 States and pending in 3 more, which is a valuable instrument in dealing with child snatching and enforcing continued parental involvement.

The passage of this act by all 50 States will end the practice of child custody shopping when there is a valid court ruling in custody and we trust upholding of the original custody ruling. I regret I cannot give my wholehearted support to the passage of this bill, in support of my colleagues which are in favor of passage. But, I cannot in all fairness wholeheartedly support this bill. There is not one of us here today who does not agree that child snatching is a bad thing. The real question is, "How shall we go about stopping it," and I select a stronger State level approach.

For one thing, there is a serious shortcoming in the proposed bill. It will not do anything for children hidden out within the same State. It will only serve interstate problems. What about cases where the parent remains in the same State? I have been associated with cases where local authorities could not nor would not reveal location of the children in the same county the other parent was living in.

The bottom line is in all of this the continued parent involvement of the children until they reach their majority. Should S. 105 become law we will still have to go back and change State laws to provide information revealing where the children are living.

Family law is one of the most rapidly changing areas of law. Since the advocates for a Federal antichild-snatching law began their crusade, things have changed. We have passage of the Uniform Child Custody Jurisdiction Act which is almost passed in every State. Let's work for passage in all States and see how this works. The next thing we need to do is get those county judges straightened out.

I would like to express my gratitude to Senator Wallop and the other cosponsors of this bill for their concern in offering to help correct a problem of so great a personal tragedy. Also, I would like

to express my gratitude to this committee for inviting me here today and having some input on this bill.

I would like to conclude with a short story. There is a story in the Bible which tells about how when an unclean spirit was cast out of a man, and this spirit being unable to find another person in which to dwell, returned to the person from which it was cast, and finding it's former house swept and garnished brought in seven more spirits more wicked than himself, and the last state of the man was worse than the first. I tell this little story because it has been my experience that people do not want to obey laws. They will go round about laws, come up with new ideas to get done what they want.

So, might I just say, be careful when we make laws.

Thank you very much for listening.

Senator MATHIAS. Thank you, Mr. Doppler.

I will restrain myself from asking questions until Mr. Clevenger has made his statement. I can't restrain a comment that I do disagree with your conclusion that people don't want to obey the law. I think the American people, and the people of many other nations, are really exemplary in that, as I believe Socrates said, "It is the pleasure of the citizen to obey the law." By and large, we do. It is an aberration of human behavior rather than the norm of human behavior to violate the law.

But, let us have Mr. Clevenger.

Mr. Clevenger, if we could have a brief summary of your statement and then we can get to some discussion.

Mr. CLEVENGER. I am sure going to try to. Thank you, Mr. Chairman and members of the subcommittee.

I am Donald E. Clevenger. I represent a couple of groups—Fathers United for Equal Rights and the U.S. Divorce Reform.

I never thought I would ever have this problem. I never thought I would be here. I hope that I never have to come back. But, on the other hand, I am glad to be here. These two groups that I represent are single fathers. Most of them have a real horror story. Some of them are exaggerated. I don't want to get into how many members we have. It varies from day to day. They drift in; they drift out. It is nationwide and spans 3,000 miles in my association and contacts.

We are basically for S. 105. I think what turns on most of the members is the appreciation for visitation rights in the bill. This is a big problem even for a father who most often, 92 to 98 percent of the time does not have custody. He is allowed to visit his children. He is an ex-parent. This visitation will alleviate a lot of the problem from snatching when it comes from the male side.

These two groups that I represent have worked very hard for the Uniform Child Custody Jurisdiction Act. We were successful in aiding it along in both Virginia and in Washington. I believe in the law. Most of the members of the groups that I belong to believe in the law. My knees tremble when I go before a judge. I had the recent experience 1 year ago of doing that.

We think that there is a solution under the law and we keep finding out that it is very, very difficult. We advocate the passing of joint custody, presumption of joint custody in all States. This is not the proper forum for that. I would like to get it into the record. I think

this would alleviate the problem as well. That is a local issue. We want the custody to be decided at the local level. We want some help though when the local level has conflicting orders such as in my own case.

Yes, my children were snatched a year ago. I have legal custody. I had legal custody. She has legal custody too. I had it first. The children paid the price. I could resnatch them. I have had no contact now for 15 months. I would like to at least know where they are and how they are. This is not a story about someone else. It is a story about two lovely kids that I love very much. I would like to see them. They are 3,000 miles away. That in itself is a tremendous obstacle.

Then you are obstructed by courts who have never seen you. Awards are made 8 hours within arriving in a State. That is what she got—8 hours after getting off the public transportation, she obtained custody. I was never notified. Both States have the Uniform Child Custody Jurisdiction Act. I appealed it to the State Supreme Court in the State of Washington. I lost. The children are there. She has possession. They have jurisdiction. Virginia continues to allow me to have a piece of paper that says I have custody.

She attempted to leave the country or get a passport. She was stopped. Our Government is not all bad. The Passport Office will help you. I wanted to know how my children were doing in school. She—there is a way around this, by the way. I am aware of it. She is not. I hope she never learns. I hope we can plug that loophole. I don't want to discuss it here.

I also hope very much that we can get this higher court to resolve these conflicts. The local courts, it becomes a very provincial problem. Gee, I don't want to criticize them totally. We do need a higher forum only to decide who has jurisdiction. I could live with one or the other. There are many thousands of dollars that I have spent so far for attorneys, private investigators, and my own flights back and forth, for naught. At least, if I could get a forum, maybe I could win. But if I win in Washington, she will go some place else. This is wrong.

The fact that possession is so important under the uniform act, in a local court and a State supreme court, appalled me. Justice, I still believe in it. I think we can make the system work. We can make it better. We need this law. We need S. 105. It won't help my children. Do it in memory of my children. The damage has been done. The private investigators report to me how severely damaged my children have gotten.

The U.S. Government came to my aid in another way. Within the Office of Health, Education, and Welfare, Federal Locator Service would do nothing for me. I had to pay for everything. She has been represented by State's attorneys. I have had to pay for my own. I pay him when he is sitting and waiting. We can't even schedule appointments in court. The State's attorney is free. All this is bad. She comes to me under URESA now when I have custody within my own State and says she wants money. She is destitute. She refuses to given an address or a telephone number.

I am presently ordered to pay child support for the children that I have custody of. My parents know not where they are. They have not had any contact either for 15 months. Grandparents pay in this, too. Friends, other relatives. It is very emotional.

An organization within the U.S. Government has helped me. I was concerned how my children were doing in school; I couldn't even get

grade cards. Schools obstruct you. Schools say, "I don't have to pay any attention to you." But schools do have to pay attention to you under an organization within HEW called FERBA. Don't ask me what that stands for. I haven't figured it out yet. But they stopped payment to a public school because they wouldn't give me the children's current records of how they were performing.

It is amazing how fast that school found a Xerox machine and got me those records, 3 days special delivery, after 5 months of hassle. They are now in a different school. They have moved again. The telephone number is unlisted. It is tragic. I don't know what we can do about it except to urge you to not let this happen to any more children.

Snatching them back, yes, I could. I have been admonished from the bench, "If you loved your children, you would resnatch them," by a Judge, a local Judge. I find this incredible. My attorney says, "Why don't you resnatch them?" I can't do this to the children that I pray for daily, and more frequently than that. I pray to my God that wherever they are and however they are they are OK, and they will be helped.

This woman that I was married to, I love very much. She is not here today. I am sure she has a different side to present. But she is not interested in the law. She is not interested in anything but herself. She did not do this for the children. She wants money. She will get it. I would pay, but where do I send it. Not to the County Child Protection Agency in the State of Washington. I cannot live with that. I will go to jail first, me, a law-abiding citizen.

These groups and more particularly myself emotionally want this bill very much. The visitation—yes, it helps. Even when we win custody like I have, one of the lucky 2 to 8 percent, all she has to do is cross the State line—you spend $22,000, you spend $40,000. I have only been at it a year and a half. I have a long way to go. I will win. I will see my kids some day, if they are still alive. I don't mean to be melodramatic. We want full faith and credit between States. The States can't get this thing resolved between themselves. We want the correct use of the Federal Parent Locator Service or else change its name to a collection agency. That is all it is. There are collection agencies that will collect for less of a fee than they charge.

Many of us have given up. Many don't have any faith at all in this system any more or the laws. Many go "crazy" and do really crazy things. We talk about the violence when the FBI becomes involved. I agree with everything I have heard this morning except the official administration positions. How about the violence of an amateur who goes in and snatches his kid? How about the number of children who have died in this manner? How about the child abuse?

I would rather have a professional going in. I would rather have some help figuring out where I paid the money to see my kids. Even after I find my kids, I can't visit them. She will obstruct it. She has no respect for the laws. That's my problem, not yours, gentlemen.

Take away the license to run. It is just a little old problem. I think Chuck Yeager says that. A lot of airline pilots say it. It is not a big problem. There are only 25,000 to 100,000 cases or more a year. It is a little problem. It is not millions and they are not terribly important people. They are just little people, but let's fix it anyway. Let's put a Band-Aid on it. I don't think S. 105 is going to fix everything. It is not a

panacea. But it is progress and it would sure restore my faith in our system. I think it will work.

We heard this morning that it cost a lot of money when the FBI and the Justice Department and HEW become involved. How about the money I have spent? How about the money the other 100,000 or so people last year spent and the next 100,000 are going to spend? I wouldn't mind paying a little more in taxes if I could find a responsive Government that was more concerned with love than the mere collection of money, personal greed and profit.

Thank you very much, Senator. I am sorry I took so long.

Senator MATHIAS. I don't believe you told us, or if you did, I missed it, the ages of your children.

Mr. CLEVENGER. No, sir, I didn't feel it is terribly important, but their ages are 7 and 8. I have a long time yet.

Senator MATHIAS. Not important perhaps as a legal matter, but as a matter of human concern they are at a very impressionable and tender age.

Mr. CLEVENGER. Yes, sir, they are.

Senator MATHIAS. I would point out to you that on page 5 of the bill, as Senator Wallop has drafted it, he does provide that the custody determination includes visitation orders. So that area is contemplated.

I want to say to Mr. Alexander that I would agree with him that the FBI and the Justice Department are not equipped to make determinations as far as custody or visitation rights are concerned. As I read the bill, it would not contemplate vesting any such power in the FBI.

Mr. ALEXANDER. I don't read that to mean that either, Senator.

Senator MATHIAS. You expressed that concern.

Mr. ALEXANDER. I only point out that I am delighted that the visitation section included that. I would like, since I do have it present, to introduce into the record the sworn affidavit of a parent by the name of David G. Clark, whose children were taken by the mother in 1975, to the State of New York.

The State of New York granted a divorce to the mother. At the same time, although Mr. Clark was never in the jurisdiction of the State of New York, they awarded her $175 a week on his $17,000 per annum income which was to include alimony and child support.

Now, $175 a week, Senator, comes out to $757.75 a month, based on 4.33 weeks in a month. After he takes taxes off and FICA and other expenses, he has an income of approximately $991.66 a month. In other words, the State of New York felt that he could travel from Delaware to New York and also provide for himself when he is left with $233 to live on.

This is a gentleman who has religiously gone up each weekend to visit his children. I would ask permission to include his affidavit.

Senator MATHIAS. That affidavit will be included in the record with your statement at the conclusion of this oral presentation.

[The affidavit referred to can be found in the appendix.]

Mr. ALEXANDER. I also have some photographs that I personally took when we went up to visit those children. I would like to point out to you that one of the photographs shows him trying to talk to his children through a car window. The window was cracked open about 2

inches. The stepfather or his former stepfather went to the car door, wound up that window and closed it on him. This is the sort of viciousness that is visited upon these men.

I also have some film taken on a 100 by 10 by 1 camera. This is an attempt of the father to visit his children. Remember, this order of visitation was given by the State of New York in his absence which allowed him to visit on Sundays from 9 to 5, in his wife's house.

He arrived 3 minutes early, and because we already knew the problems involved, you will notice we had police officers present in order to prevent a breach of the peace. Three minutes early and he is made to wait until precisely 9 o'clock before he can go in.

Senator MATHIAS. I am sorry we do not have the facilities here to project those films. Perhaps if we can make some arrangements with the staff so the committee can view those films, we will talk to you about that at the conclusion of the hearing.

[The pictures referred to above can be found in the appendix.]

Mr. ALEXANDER. If I may make the comments that I wished to make earlier, the Virginia Constitution of 1776, the Bill of Rights, section 14, I realize it is a little old, about 202 or 203 years ago, or 204 years ago, but there was a comment there——

Senator MATHIAS. Written by a very modern mind, though.

Mr. ALEXANDER. Yes, sir.

I am amazed, the more I look into the ancient documents of our Nation, the more modern I realize they are. The comment or section 16 provides that the people have a right to uniform government. I believe Senator, section 105 will give us a modern day interpretation of that right which is a sentiment which is still dear to us.

Senator MATHIAS. It is a good Jeffersonian principle.

Mr. Doppler, I was interested by your statement. It would seem to me, however, that a number of your specific concerns are not concerns of this committee or with S. 105. They relate in large measure to State law reform. S. 105 is either silent or neutral on those subjects. It is silent or neutral not because we are indifferent to them, but because it is beyond our constitutional authority to legislate in those areas. These are the areas in which the States must legislate. So, the passage of S. 105 would not prejudice the goals that you seek, and perhaps would advance them. It focuses attention on those areas.

You have all heard the bells ringing. I have let the roll call go until the point of what we call the "jogging point," to get over to the Capitol and vote. So, unfortunately, we will have to stand in recess at this point. We will got to the next witness. I do, however, have several questions for this panel which we will propound to you and ask for your comments in writing, and specifically, Mr. Doppler, on the point I just raised.

[The prepared statement of Mr. Clevenger follows:]

PREPARED STATEMENT OF DONALD E. CLEVENGER

In the interests of this hearing and the groups that I represent, I feel it necessary to recount my personal history in regards to the subject bill. While my case is not entirely an everyday happening in a custody struggle, parts of my struggle happen with alarming frequence in the legal jungle that exists. There are cases where a parent must first be found in order to cause him or her to face up to his or her parental obligations of both a financial and supportative nature.

Unfortunately there are many cases where the "best interests of the children" is found by the courts to be only of a fiscal nature. The system appears to be unfairly biased towards mothers and financial interests in altogether too many cases. Where these biases do not exist, the license is there to simply cross a State line and seek a more favorable jurisdiction in the absence of S. 105.

My own children, then aged 5 and 7, were abruptly removed from their school and my care on November 1, 1978, by my then wife and the mother of the children. I have not seen them since, even though I was awarded "first" custody of them under Case No. J705–1 and J706–1 in the Commonwealth of Virginia where we were then living. The State of Washington subsequently chose to award custody to my ex-wife by entering a conflicting order, Equity Number D119731, granting custody to the mother and restraining me from even seeing my children. This conflicting custody order in the State of Washington was accomplished with that court's full knowledge of the Virginia custody order. I had notified the local court in the Seattle, Wash., area of my Virginia custody order because I had reason to believe my ex-wife would go there to commence her shopping for a more favorable jurisdiction. I was notified of the Washington action and proceedings which had already taken place on December 20, 1978, nearly a month after the order was signed granting the mother custody on November 21, 1978. The jurisdiction of the Washington Superior Court was contested before the Washington State Supreme Court through March of 1979. The Washington State Supreme Court found that the mere physical presence of the children warranted jurisdiction in that State.

It was over a month before I was in any way informed of even the general whereabouts of my children, after they were removed from the sanctity of my care and the Commonwealth of Virginia and I still do not have their address or the unlisted telephone number where they are living. Even with a valid custody order awarding me custody of my children and granting me child support, I was unable to use the services of the Federal Parent Locator Service, because I did not have physical possession of my children at that time when I needed their help. I had no help, although it was solicited, from any local, State or Federal agencies, whatsoever in locating my children or checking upon their well-being. Because of a history of child abuse and neglect on the part of my ex-wife I was also concerned for their physical well-being. All agencies choose to not get involved in a so-called domestic dispute. I have been forced to engage the services of a private investigator in an attempt to find my children. To date my efforts to establish contact with my children have been to no avail, other than to line the pockets of numerous attorneys and private investigators with many thousands of dollars representing more than my net annual income. It is somewhat easier for a woman to hide behind unlisted telephone numbers and to keep moving than it is for a man to do so with his frequently demanding professional obligations. This is not to say that this problem is entirely unique and applies to fathers only. The use of children in this demeaning manner to hurt the other parent is wrong regardless of the sex of the parent who perpetuates the act.

Interestingly enough, I have recently, within the last week, been ordered to pay child support. The courts hope, after 13 months of behavior to the contrary, that my ex-wife will have matured sufficiently to allow at least some visitation to occur between my children and myself. The courts are not unmindful that the payments of child support might be sufficient bait for my ex-wife to change her behavior patterns. The dilemma the courts are now faced with is where should I make these payments for child support that my ex-wife has so eagerly sought since she still refuses to provide an address. The Uniform Reciprocal Support Agreement between States have made it simple for this woman to harass me with numerous court engagements, each of which have cost me both emotionally and financially while her interests have been served and protected by the free services of the Commonwealth attorney in my home State. Even should I be so fortunate as to be granted visitation privileges with my children, their having been removed to a place so far away makes any meaningful contact both expensive and difficult, this fact the courts have decreed is my problem and in no way a problem or concern for the person who took them so far away.

I feel S. 105 may relieve some of these conflicting custody orders and will lessen the availability and attractiveness of frontier justice such as my ex-wife accomplished in removing the children and seeking a more favorable jurisdiction after custody proceedings were initiated here in Virginia. This has been very trying and demanding upon my children, I'm sure, and upon myself. I love my children very much.

Basically, this woman whom I married and loved cleaned me out. At the end of the marriage I was left with no home, no automobile, no money, incredible debts and, most important, no children, even though I had legal custody in one State. I am now ordered to pay child support and do not even know where my children are or if they are. Even if my case were uncommon, it should not be allowed to happen. This woman warned me that she would clean me out but I believed in justice and even expected to find some fairness in the system. I know of cases that have dragged on much longer than mine and some that appear to be even more extreme than what happened to me. This is a recount of what has happened to me and what is happening to my children and as I understand this is what S. 105 is intended to prevent. I understand why some States encourage jurisdiction shopping, the child support money will be spent in their State and there is always the possibility of ripping off the Federal Government for aid to dependent children, but it should not be so. Unfortunately some judges feel that mothers are the weaker sex and need the help of the system, which is sometimes true, however, the pendulum has in some cases swung a bit too far. Neither sex and, more importantly, the children should not be abused by the system.

With joint custody being a viable, albeit difficult, option in all 50 States, we question a system which provides so well for the abuse of our children and for jurisdictional shopping. The system seems obsessed with making some loving parents into ex-parents with little or no meaningful contact with the children who are loved. The system is concerned with the rightness and collection of financial obligations above and beyond the best interests of the children.

Our Federal Government provides the services of the Federal Parent Locator Service as a collection agency but it will not locate children who have been absconded with or the other parent who does the absconding and secreting. After a few days, or 13 months, or 7 years or more go by without contact with the children, and in the absence of S. 105, the choice becomes one of accepting monthly child support obligations without visitation or re-snatching. We prefer S. 105. FPLS will not assist with locating parents or children unless one has physical possession, even when a person has a legally defined right to both custody and child support. Perhaps we should consider changing the name of FPLS to call in a Federal collection agency to be used only against ex-parents, and mostly ex-fathers at that. The use of state attorneys to harass a loving father is bad enough in the many URESA cases, but the lack of support from the misnamed agencies within our Federal Government is devastating. This reinforces the unfairness of the existing system. The tremendous financial costs which are incurred by parents, especially men, in a custody struggle make custody struggles a rich man's game which is so often both devastaing and futile. S. 105 will not repair the inequities of the system, but it wi'l make the mere crossing of a State line less attractive to those who wish to continue the battle in a more favorable jurisdiction.

We are confronted and confounded by a system that we did not create and hopefully will only face once in a lifetime. Our children, as well, must live with the consequences. Many will attest to the unfairness of the present system, and many of us who have confronted the system are appalled by the emotional abuse heaped upon our children who are so frequently mere pawns used for selfish gain. The two groups which I represent are fervently struggling with their emotions as paying ex-parents. We have been instrumental in getting the Uniform Child Custody Jurisdiction Act passed into law in both Virginia and Washington in the last year, only to see the extremely sexist favors system prevail in the local courts with a continuing concern for collection and no real concern for the best interests of the children involved. We are also ardently supporting a presumption of joint custody in all States, but find our efforts at protecting parent's and children's rights closely akin to making water flow up a vertical rope. We shall prevail in time.

In the meantime we implore this august body to act favorably upon S. 105 with all haste so our children will have a right to have contact with both parents should their travels take them across State lines. State courts obviously cannot or will not resolve this situational conflict between themselves and in the best interests of the children. When children cross State lines in a custody conflict we desperately need a higher forum to decide the issue of jurisdiction, which States selfishly refuse to resolve between themselves.

In addition, the loss of productivity and the financial obligations incurred by either parent when pursuing visitation, which is often obstructed and

requires still more court appearances, is abhorrent. FPLS should be less of a collection agency and more of a true locator service.

The immediate passage of this bill is urged before another 25,000 to 100,000 children are caused to suffer from being snatched or secreted in the next year. If this legislation is allowed to drag out for another 5 years there will be upwards to 500,000 or more children who suffer from our inaction. Please care for our children.

Senator MATHIAS [continuing]. Thank you very much. We will stand in recess until the end of this roll call vote.

[A short recess was taken.]

Senator MATHIAS [acting chairman, presiding]. The hearing will come to order.

Our next panel will include Ms. Sarah Keegan, former coordinator, single parent family program, of the Department of Community Affairs, Providence, R.I.; Dr. Jeannette I. Minkoff, probation-family services coordinator, of Monroe County, N.Y. and Prof. Michael W. Agopian, director, Child Stealing Research Center, Los Angeles, Calif.

PANEL ON EFFECTS OF CHILD STEALING:

STATEMENTS OF SARAH KEEGAN, FORMER COORDINATOR, SINGLE PARENT FAMILY PROGRAM, DEPARTMENT OF COMMUNITY AFFAIRS, PROVIDENCE, R.I.; DR. JEANNETTE I. MINKOFF, PROBATION-FAMILY SERVICES COORDINATOR, MONROE COUNTY, N.Y.; AND DR. MICHAEL W. AGOPIAN, PROFESSOR-DIRECTOR, CHILD STEALING RESEARCH CENTER, LOS ANGELES, CALIF.

Ms. KEEGAN. Honorable Chairman and members of the subcommittees, I am going to make this as short as possible and I also do not want to be repetitive.

Senator MATHIAS. Your full statement, and I say this to all three of you, will appear in the record at the conclusion of your oral testimony.

If you can summarize it, it will speed the work of the committee. I would appreciate it.

Ms. KEEGAN. There are a few comments that I wanted to make. I agree with the amendments as proposed earlier by Senator Wallop. In addition, I would like to see the following definition of parental kidnaping: That is, any parent who conceals a child or children from the other parent, thus, denying the child or children access to one parent. I think the custody situation is important, but I also think that by denying to that child or children access to the parent is a very serious situation. Very negative, also.

Basically, the points that I want to make are that for whatever reason a parent kidnaps a child, they are not good enough to justify uprooting the whole life of the child. I strongly believe that information, education, encouragement, and support related to custody decisions given close to the time of separation and divorce in family courts throughout the country would discourage some parents from kidnaping their children. However, I also strongly believe that we need S. 105.

It was quoted in Time Magazine about 1½ years ago, a Dr. Philip Weeks is quoted as saying, "Child stealing is one of the most subtle and brutal forms of child abuse," and I agree. Now I basically too believe that every child has a right to access to both parents, un-

less there is a criminal situation or a drug addiction situation, especially after a separation or divorce. I think we are all aware that feelings are very heavy at the time of the separation or divorce. There is a lot of anger. There is a lot of guilt. This causes some parents to kidnap their children.

If this does happen, I feel that there should be a process that should exist to rectify this situation as soon as possible, thus minimizing the trauma to the child. I have really agonized over watching parents, talking to them, listening to them tell me their stories about the suffering that they have gone through, the trauma that their children have gone through and as a counsellor, as a coordinator of the program, I was very frustrated in not being able to refer them to any resource.

It really seems an atrocity to me that for the most serious problem a single parent can have, there is no resource. If a single parent needs food, I can refer them to food stamps. If they need housing, I can refer them to section 8 housing. There is a waiting list, but still, I can refer them. Yet, if there is a kidnaping, there is nowhere I can refer the parent. We need S. 105 as a resource. I see it as a really good beginning. I know there are a few problems with the bill. I still think that it is a very good beginning.

I think we also need a clearing house of information: A place to go or a place to call where parents can find out what resources exist in their own State. This has been one of the biggest problems in that there is so much out there now. There is such a bureaucracy of agencies and programs all trying to help people with different concerns related to divorce. If one person would have one place to call, this could be an 800 high line, and be referred to the proper agency in their own State, I think this would be of great help. I know everyone is tired. I am going to say that's it and thank you very much for having me come.

Senator MATHIAS. Thank you very much.

Dr. MINKOFF. I am Jeannette Minkoff. I hold a doctorate in clinical psychology. I am a practicing family therapist. I have been employed for the past 12 years by the Monroe County Probation Department in Rochester, N.Y., as a family counsellor.

My present title is probation family services coordinator. In addition to performing family counseling services and staff training, I supervise the special investigations unit with the probation department. This unit receives referrals from the supreme court and the family court of the departments in the Seventh Judicial District, State of New York, which order investigations, evaluations and family counseling regarding child custody and visitation matters before the court. The matters involving custody come to us before decision and disposition. The visitation matters are generally referred after a custody decision has been made.

My testimony is based on my contacts with more than 100 cases where parental kidnaping has taken place prior to referral. In only four cases did kidnaping take place after court ordered counseling and investigation. When matters are referred regarding visitation, the parties have generally been through a long and tiring adversary proceeding with extended litigation. The principals are so hostile and angry with each other that they have forgotten about their parenting

responsibilities to their children and are in fact using the children to hurt and punish each other and often appear to have divorced the children in the process of dissolving the marriage.

After a custody decision is rendered, the noncustodial parents are even more angry in that he or she has moved from the marital residence and has been ordered to pay support for the children which most often necessitates a dramatic change in life style. The noncustodial parent feels he or she has been denied rights as a parent and is prepared to fight for liberal visitation. Even if a visitation schedule is incorporated into the court decision, there is often a complete breakdown in communications between the parents because of the following reasons:

Both parents are distressed by the change in living circumstances. Support payments are often not made on time, and the custodial parent denies the noncustodial parent visitation. The custodial parent makes other plans for the children which would interfere with the visitation agreement, sometimes because the other parent brought the children home late after the prior visitation. Often visitation is denied because the other parent has introduced the children to another partner and the custodial parent feels he or she may lose the children to the other party.

Visitation is sometimes denied because of alleged nondiscipline and allegations that the noncustodial parent participates in only enjoyable and entertaining activities with the children while the custodial parent is the total child care person who does the disciplining, cooks the meals, washes the clothes and so forth and is constantly building up anger over his responsibilities. The custodial parent may have a legitimate complaint about the type of activities the ex-spouse involves the children in, together with an objection of his or her physical care of the children, perhaps alleging the visiting parent is not feeding the children properly or permits them to play outdoors and get dirty and the children are unsupervised in their activities. The fighting between the parents continues and the noncustodial parent begins to think about kidnaping the children.

Let us look at what is happening to the children during the adversary proceeding with extended litigation and the parents angry and insultive behavior which the children have been and still are exposed to.

One: Children almost always blame themselves for the parents' breakup.

Two: They feel the separation and loss of the other parent in the family system.

Three: They are forced to adjust to a new routine and often a new life style in unfamiliar surroundings.

Four: Children notice behavior changes in their parents and are frightened by the lack of love and support and they become fearful of the angry altercations between their parents.

Five: A child is often asked to choose which parent he wishes to live with. Children are afraid to choose and ultimately struggle to please both parents or on some occasions, they make a choice and then must live with intense anger and resentment from the other parent.

Six: Children often become depressed and withdrawn and keep their feelings of happiness, sadness, and fear deep inside because of fear of further rejection.

Seven: Children become preoccupied and lose their powers of concentration and motivation in relation to school and they sometimes isolate themselves from their peers.

Eight: Because of intense emotional and psychological pressure the child or children may strike out at one or the other parent.

Now, a child who is already suffering emotional trauma over the divorce and separation is suddenly and secretly kidnaped by one of his parents. This may be before a final hearing when a custody determination will be made or after a court decision regarding visitation or, after being denied visitation rights by the other spouse. The kidnaping parent intensely feels that he or she has been denied equal rights to the children. In some cases, it can be established that the perpetrating parent is emotionally unstable and is not functioning within normal limits. In such cases, the person is clearly convinced that his aberrant behavior is justified.

The psychological damage to the child is often severe and is sometimes irreversible and irreparable; to wit, the parent always almost takes the child on a regularly scheduled visitation and does not return him or he picks the child up on the way home from school or while the child is outdoors playing. This is done without explanation and without a plan or prior discussion.

Children have described their fears, sadness, loneliness and hysteria upon realization that they were not being returned to their home. Children have told me that they begged, pleaded and cried in an unsuccessful effort to persuade the kidnaping parent to return them. They know almost immediately that they have been lied to and sense the parent is in violation of the law. Children have stated their concern and worry about the other parent and sense the agonizing terror and other parent would feel when they were not returned.

The kidnaping parent often explains to the child that he took him or her because he loves them so much and children begin to wonder about love. "Do people have to hurt someone to love someone?" A direct quote from a 6-year-old boy.

Children of divorce have already suffered anxieties over the changes in the family system and the way it functions. Children develop coping mechanisms and attempt to find pleasure and security in such things as a familiar environment, a special toy, peers, a teacher, a friend and so on. When a child is snatched from his familiar environment all of a sudden even these little special things are out of his grasp. The child is stripped of everything he has had to identify with, including the other parent.

The child or children are now forced into a new environment, a new school and a new home with nothing familiar but the clothes on his back. The children are then instructed to change their name and they are entered into school with falsified school transcripts. The children are almost always told they cannot play with friends because they may divulge something of their past and can be detected.

A 7-year-old child told me he could not remember his new name or the falsified name of the school that he was instructed to say he last

attended. He explained he did a lot of erasing on his papers as he continued to write his own name. Another child told me she begged to call her other parent on her birthday as she missed the parent terribly and knew if she were home there would be a party. A little boy aged 5 told me his taking parent did not have much money and they had to get clothes and shoes for him from a big box on the street. All of these children were told by the kidnaping parent that they would adjust and be happy soon. Unfortunately, none of them ever reached this promised plateau.

When cases are referred to my department, we begin to counsel both parents and children in the process of the investigation. We work with parents toward an agreement in the best interest of the children.

I believe this type of professional intervention has reduced child kidnapings appreciably in our area. I support, without reservation, S. 105, the Parental Kidnaping Act introduced by Senator Wallop, and certainly this is a valiant effort in an attempt to protect the rights of our children.

The Uniform Child Custody Act also serves the best interests of children and family, and in addition, I would urge all of you to consider for all States a joint custody law as proposed in bills before the legislatures of California, Michigan, Iowa, and Wisconsin. I see the joint custody concept as offering an excellent way of reducing kidnapings, especially if a professional counseling unit were provided as an aid to the court.

When parents are able to reestablish communication with regard to the best interests of their children, they can begin to function jointly as parents. This counseling service could offer divorcing parents a nonadversary forum where they could air their frustrations, dissipate their anger and begin to coordinate their care of the children.

Thank you, Senator, for inviting me.

Senator MATHIAS. Thank you very much.

Dr. AGOPIAN. Mr. Chairman, my name is Michael W. Agopian. I teach sociology. I direct a research program concerning parental child stealing in Los Angeles, Calif. I would like the record, in the interest of time, to reflect my introductory comments and also my statistical analysis and critique of the extent of parental child stealing in California.

I would, however, like to make comments in two areas:

First of all, preliminary findings from my research study concerning parental child stealing, and second, specific aspects of S. 105.

As I mentioned, I am completing a research project that examines 91 cases of parental child stealing from the Los Angeles County district attorney's office between 1977 and 1978, the first year of California's criminal law dealing with parental child stealing.

The study examines aspects of prosecuting child stealing offenses, the participants under parental victim and child, and, third, the crime scenes.

I would like to summarize some of the preliminary findings from the study that is titled: Patterns of Parental Child Stealing.

First of all, children between 3 and 5 years of age were most frequently taken as was found in 34 percent of the cases. Children between 6 and 8 years of age were taken in 22 percent of the thefts.

In only 36 percent of the cases was the child returned to the guardian.

Precipitating circumstances to a child theft found that 33 percent were perpetrated under the guise of an ex-spouse exercising weekend visitation; 17 percent are taken from a baby sitter's care, and 12 percent were taken during a day visitation. In no case was the parental victim beaten by the offender in the process of gaining control of the child. In 8 percent of the theft, some mild degree of physical force was used, usually a push or a shove.

Parental child stealing is a low-risk crime. In Los Angeles County, in 79 percent of the cases, offenders were not arrested or in custody at the time of investigation. Child stealing charges were filed for prosecution in 55 percent of the cases. In 23 percent of the cases a bench warrant was issued for the offender's arrest. Charges were handled as a misdemeanor in 17 percent of the cases and in 10 percent of the instances, charges were dismissed in the interest of justice. In 6 percent of the cases we studied, the victim refused prosecution.

The child's home is the location of the offense in 67 percent of the crimes, while the school is the crime site in 12 percent of the offenses. In 43 percent of the cases there was some form of communication between the offender and parental victim after the theft.

Communication basically fell into three areas. First of all a very short communication that informed the parental victim the child was abducted and he is safe.

A second type of communication attempted to justify the abduction. A third type of communication which was commonly noted attempted to induce a reconciliation or a reunion of the relationship between spouses. I also found that child thefts are well-distributed throughout all seasons of the year. Fall recorded 30 percent of the instances; summer, 29 percent; winter, 22 percent, and spring, 21 percent.

These findings are preliminary and they should be individually examined by additional research. I would like however, in the interest of time, to enter into the record, three articles that present in detail findings from my study.

[The material referred to can be found in the appendix.]

I would now like to address the second aspect of my discussion, specific concerns with S. 105, the Parental Kidnaping Prevention Act. The attraction of interstate flight to evade law enforcement will continue to spawn parental child stealing unless uniform national provisions for child custody are implemented. State laws are frustrated by persons snatching a child and moving to another jurisdiction. I also would like to slide over, if you will, some of my critiques for and discussion of the S. 105 full faith and credit aspects. I would like the record to reflect that I support it. I think the definitions are clear. I think it would be a workable policy.

The proposal to utilize the parental locator service should be an important aid in deterring interstate abductions. I also feel that custodial parents should be exempt from the service charge for the use of this service. I think if that is the intent of this bill, that it should be reflected in S. 105.

The definition of parental kidnaping in the legislation is clear; however, section 1203 defines the child as 14 years of age. This should be

made uniform with other statutes and increased to 18 years of age. This would then protect all children subject to custody determinations. Also, in section 1203, under defense for prosecution, if a person is suspected of parental kidnaping and returns the child unharmed within 30 days after the issuance of a bench warrant for arrest, this would constitute an absolute defense. This would in a sense allow short-term thefts and frustrate efforts by local authorities. Although this provision would induce the return of children, it has no deterrent value if it remains as a total defense. I feel this section of the legislation should be deleted.

The requirement that parental victims notify law enforcement authorities within 90 days should be increased to 120 days. This additional time period will enable local remedies to be exhausted and allow legal procedures for returning the child to be pursued thereby reducing self-help methods that may create further conflict.

The legislation states that while a crime may have been comitted if there is a concealment for 7 days or restraint for more than 30 days coupled with interstate or foreign transportation, and in violation of custody rights, the FBI cannot investigate until 60 days has elapsed from the date the local authorities are informed and Parent Locator Service assistance is requested. This 60-day requirement is excessive. The FBI should intervene on evidence of a Federal crime without any 60-day delay. If there is no evidence of interstate flight, the FBI should investigate after 30 days of notification to local law enforcement authorities. This would allow local resources to be exhausted before Federal agencies are used.

I commend your efforts to address this complex and difficult problem. I strongly support S. 105 and feel that with some of the amendments noted in my analysis, it will be an effective response to the growing problem of parental kidnapping in America. Thank you.

Senator MATHIAS. Thank you very much.

One of the issues which has come up in this panel and which came up in the last panel with Mr. Alexander and Mr. Doppler and Mr. Clevenger is whether or not this bill would in some way affect a child's own wishes, a child's own preferences. It is not my perception that this bill would in any way alter the existing practices in State courts which is very frequently to take a child into chambers or into some private place, particularly a child of very tender years and to try to give that child an opportunity to express his or her personal preference as to which parent he or she would like to live with under the most neutral kind of conditions that you can devise in a very abnormal kind of climate. It is a tough thing for a child to go through; but at least it has been my observation as a lawyer that courts are sincerely concerned with the welfare of the child and do make such attempts under normal conditions. I don't see any threat to that practice as a result of this bill. Do any of you?

[No response.]

Senator MATHIAS. I think several of you have mentioned that.

Dr. AGOPIAN. I don't think that State laws or judicial discretion is going to be preempted. I think what is important to recognize is that we need a total network, if you will, to address this problem of parental child stealing. No one resource or no single response is going

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to blanket or resolve this issue. I think that what we have to recognize is that S. 105 will be a valuable supplement to individual State legislation.

Senator MATHIAS. Dr. Minkoff mentioned this subject.

Dr. MINKOFF. Yes, I would like to respond, too, Mr. Chairman.

Senator MATHIAS. Yes, if you would.

Dr. MINKOFF. My feeling is that the longer these children are away from their familiar surroundings and the family system in which they had usually functioned, the more psychological damage is indeed incurred.

I feel that your bill would certainly broaden the district attorneys in the State's ability to return these children before the psychological damage is irreparable.

Senator MATHIAS. Well, I have been generally familiar with this kind of problem literally all my life because my father was enormously interested in problems of children. He was deeply involved in the Maryland Children's Aid Society which pioneered in helping in many of these cases long before there were public agencies that were charged officially with doing these very things.

I would certainly agree in the light of that observation and experience, that a nonadversarial custody dispute resolution would be an improvement over the pulling and hauling that is involved in open courtroom litigation. It would probably be better for the child and for the parents, who might lose that sense of revenge which was testified to earlier this morning.

But the question that I think that arises is whether there is a Federal role in getting that kind of program off the ground. Do you think, in the light of your experience in Monroe County, that the Federal Government should take some initiative in this area either by way of pilot programs or otherwise, or do you think it can be left entirely to the States and to the courts and to the lawyers and to social organizations?

Dr. MINKOFF. I really believe that we need the Federal Government. We need a program nationally. We need pilot programs. We need special funding for this type of unit that I described. It is one of a kind in New York State. It seems that it would be in the best interests of all of us for the Federal Government to——

Senator MATHIAS. Let me arbitrarily expand this panel just for 1 second. Mr. Alexander is still in the room. It is a subject about which he expressed some interest during his testimony. Do you have a feeling on that particular subject?

Mr. ALEXANDER. Yes, Senator, with respect to the question of a panel, very definitely. Constantly across the country, Mr. Doppler has himself expressed that need of a panel. Whether the panel should be made up of one lawyer, one CPA, one social worker, one psychologist, or whether we could use the old jury concept of an arbitration panel, definitely if we could just get out of the adversary system and in other words, every time there was a divorce petition filed and there are children involved, these people were required to go to a panel, an arbitration panel where they can work out their problems instead of an adversary concept, I think this Nation and our future Nation would be most grateful.

Thank you, Senator.

Senator MATHIAS. Thank you, Mr. Alexander.

Let me ask Ms. Keegan this question. You are a professional. I am asking you for a professional opinion on a subject which it would have been very difficult to ask Mr. Clevenger, who is so personally involved.

Some of the literature on this subject indicates that those who are in the business of engineering a child snatching can anticipate that the child, the subject of the snatch, will be extremely agitated, upset, but then they say that child will calm down in a few hours or few days at the most.

What is your professional observation as to this aspect of the problem?

Ms. KEEGAN. I think it depends very much on the individual situation. It depends on how long the child has been with any particular parent. It depends on the child himself, the age of the child. I think the more that I have talked to parents involved in divorce the more I realize that it is all a very individual thing.

However, as far as calming a child down, out of fear a lot of times a child will clam up. You think they are calmed down, but from my experience—I was a day care mother also for 7 years—I am aware of children's feelings. A lot of times I worried a lot more about the quiet calm child than I did about the one that was almost climbing up the curtains. A calm feeling can be done out of fear. That is my opinion on that.

Senator MATHIAS. Well, this would confirm my own personal observations. As I said earlier, I used to be a lawyer. I am temporarily a Member of the Senate, but I am more permanently a parent and a father. I know in the case of my own children that when some unusual event would take place in their lives they didn't always give immediate evidence of having absorbed what was happening, but perhaps weeks or even months later they would make some comment which would indicate this has been an event which has been fixed in their minds, fixed in their memories and has been troubling them. We have to assume it has been troubling them in the intervening period, although they don't give any surface indications that that is happening.

Would you agree, Dr. Minkoff?

Dr. MINKOFF. Yes. I would also like to add that really children need to identify with both parents. I think that it can be clearly established that a child becomes fearful and a child somehow loses his ability to trust another adult depending upon the amount of time the child has spent away from the familiar surroundings would actually measure the degree of disability that the child would feel. But, in all of the cases, and with all of the children that I have had an opportunity to work with, it can be clearly established that there is psychological damage, even if a child is away for a period of a few short days.

Senator MATHIAS. I think that confirms again what my own parental observations are.

Professor Agopian, in table 2 of your report, the problems in the prosecution of parental kidnaping offenses indicates that 23 percent of the reported child-stealing cases were resolved when an arrest warrant was issued. Could you expand on what you mean by resolved? Did the abducting parent return the child or was there some other resolution in such a case?

Dr. AGOPIAN. You are looking at the 23-percent figure for arrest warrants issued?

Senator MATHIAS. Yes; a warrant issued. As I read the table, you mean just the mere act of issuing the warrant was either enough to intimidate or inspire or otherwise induce some resolution to the problem.

Dr. AGOPIAN. Unfortunately, Mr. Chairman, no. The final disposition or last proceeding point. So this table combines both of these determinations.

The 23-percent figure for arrest warrants issued indicates that the case is literally in limbo and the authorities in Los Angeles County, the prosecuting authorities in Los Angeles County, are looking for the individual offender. The case has simply been stagnated because the parties can't be located, and the individual also has the child. As I mentioned earlier, if I can reiterate, of the 91 cases, only in 36 percent of those cases children were returned.

Also, we might assess that the 23 percent of the individual cases that were stagnated with an arrest warrant being issued might indicate that a great many of those are interstate flight cases.

Senator MATHIAS. You note in your statement the scarcity of statistical data regarding child snatchings. I am wondering if you can tell the committee whether you think that the involvement of the Federal Government through legislation such as S. 105 would help improve the statistical knowledge that we have about this problem.

This is a very significant point. For instance, in cases of rape and sexual abuse, we are learning a great deal more about the prevalence of that problem as our statistical knowledge is expanded. Do you think we would have a similar kind of experience in this case?

Dr. AGOPIAN. Precisely. I think that is an excellent analogy. If we look at parental child stealing today. I think that it is in the same position as our knowledge on forcible rape was in 1970, 1971, and 1972, where there were literally one or two studies and a real scarcity of information on that crime.

One of the difficulties that I would suggest is that parental child stealing is a very underreported offense. I am suggesting from my statistical analysis of the extent of the parental child stealing in California that is entered into the record. Nationally we are probably talking about 75,000 to maybe 120,000 child thefts annually.

Senator MATHIAS. Does your estimate of 25,000 to 100,000 annual snatchings include retention after visitation?

Dr. AGOPIAN. Yes, 75,000 to 100,000.

Senator MATHIAS. Excuse me.

Would you repeat that again?

Dr. AGOPIAN. Yes, it does.

Senator MATHIAS. Yes.

Dr. AGOPIAN. Include retention.

Senator MATHIAS. Right.

Well, I am very grateful to all the members of the panel, and without in any way slighting Ms. Keegan or Dr. Agopian, I want to say a word in particular of welcome to Dr. Minkoff and Mr. Kurlander for the reason that Rochester, N.Y., was founded by a Marylander, Colonel Rochester, who lived in Hagerstown, Md., and to

urge you while you are here to make the short trip to Hagerstown and see that important part of your history.

[The prepared statements of Ms. Keegan, Dr. Minkoff, and Dr. Agopian follow:]

PREPARED STATEMENT OF SARA M. KEEGAN

Honorable Chairmen and members of the subcommittees, I am Sara Keegan, former coordinator of the Single Parent Family Program, Department of Community Affairs, Providence, R.I., and author of "The Resource Guide for Single Parents and Their Children." I would like to thank the chairmen and members of the subcommittees for the opportunity to speak to you today. Because I have had direct contact with several parents whose child or children have been kidnaped by the other parent, I would like to give the following testimony which relates directly to the reasons behind the creation of and need for S. 105.

I think we are all aware of the problems related to divorce in this country. It seems that as the divorce rate has climbed, so also have the numbers of children kidnaped by a parent. It has been recently estimated that between 25,000 to 100,000 children are kidnaped annually, though these statistics are difficult to substantiate, (see attached article). Parental kidnaping has been shown to cause severe emotional strain on children and severe emotional and economic strain on the parent.

[The articles referred to by Ms. Keegan can be found in the appendix.]

From my experience in talking to hundreds of single parents, I have observed that there are often intense feelings that occur during and shortly after a separation or divorce. These uncomfortable and painful feelings that include anger, guilt, hate, et cetera, cause some parents, who also feel torn about not having been granted custody of their child or children by the courts, to grab the child (or children) and run. Some parents feel they are acting in the best interests of the child (children). Others may be trying to pay the other parent back for the suffering they are going through. Whatever the reasons, they are not good enough to justify uprooting the whole life of a child.

I strongly believe that information, education, encouragement, and support given close to the time of separation and divorce in family courts throughout the country would discourage some parents from kidnapping their children. However, I also strongly believe we need S. 105 as a statement by this Nation's people that we will not allow our fellow citizens to act in such irresponsible and thoughtless ways. The psychological damage to many children is irreparable. Dr. Philip Weeks, a California psychologist, was quoted in the February 27, 1978, issue of Time Magazine as saying, "Child stealing is one of the most subtle and brutal forms of child abuse" (see attached article). I agree.

The child can be viewed as an innocent victim in parental kidnapping, and usually cannot understand why he (or she) was whisked away from the parent he (or she) was living with, familiar surroundings, and friends. It is reasonable to assume that the kidnapped child would feel confusion, anger and fear. An interesting quote from the Boston Globe, July 15, 1979, is as follows: "My ex-husband can steal my car, and they'll nab him anywhere. He can steal our child, and I have no place to turn." S. 105 would provide the "place to turn" needed by so many parents today and in the future.

I also strongly believe that every child has a right to have access to both parents (unless criminals or drug addicts) especially after a separation or divorce. If one parent denies the child the right to access to the other parent by kidnapping, then a process should exist to rectify the situation as soon as possible, thus minimizing the trauma to the child. S. 105 will not only provide a way to rectify the situation, but will also through stiff penalties discourage parents from kidnapping in the first place.

What I witnessed in parents while coordinator of the Single Parent Family program was that the lifestyle of the parent whose child had been kidnapped often drastically changed. The parent seemed totally consumed in a desperate and frustrating search to find the child, even though the odds were very much against him (or her). The change in lifestyle often included selling property to provide money for expensive private detectives, long distance telephone calls, or attorney fees in distant states.

If the parent were lucky enough to find the child (or children), then another journey often began that was not the joyous reunion dreamed of by many

parents. The finding of the child or children was sometimes the start of a frustrating and very expensive court process in which the whole custody situation was totally reexamined in another State.

The parent who has kidnapped the child probably has problems, too, though not as serious as those of the other parent. In addition to the new responsibilities of taking care of the children who were kidnapped, a very unhealthy situation would probably exist; that of living in constant fear of being discovered. It must be very uncomfortable to always be looking over your shoulder as you go about your daily living. This environment would certainly not be a healthy one in which to bring up children.

A further problem is that though "full faith and credit" or reciprocity is said to exist in many States, the fact is that this system does not always work. I would like to quote from the Providence Journal on August 31, 1979, which is part of an article (see attached article) about George Hadley, who was awarded custody of his young son in Rhode Island Family Court on March 23, 1979. His wife fled the State shortly after the custody decision was made and was traced to Louisiana by private detectives. The quote is as follows: "Both Rhode Island and Louisiana had passed the Uniform Child Custody Reform Act which requires States to honor the custody orders of other States. George had a custody order, the kidnapping charge and a contempt citation. He had followed the law, and now it was time for the law to reward him. On June 10, George had Denise ordered to court in Louisiana on the Massachusetts kidnapping charge. He waited in the court hallway for his son in vain. The judge returned Erik to Denise and scheduled another hearing in 2½ months." I spoke to George a few days ago. He knows that the judge in New Orleans has requested transcripts of the court hearings from Rhode Island. George also knows that the judge is completely reevaluating the custody decision and does not expect the decision to be in his favor.

In conclusion, I would like to close with a statement regarding my frustration as a counselor and resource person for single parents due to the complete lack of resources for this serious problem. I have spent several years of my life researching and writing "The Resource Guide for Single Parents and Their Children." I am very aware of resources available in Rhode Island for single parents. What I find incomprehensible is that there is no resource for single parents whose children have been kidnapped by the other parent. It is an atrocity that for the most serious problem a single parent can have, there is no place to turn. If a single parent needed food, I could send him (or her) to Food Stamps or the W.I.C. (Women, Infants, and Children) feeding program. If a single parent needed counseling, I could refer him (or her) to the local mental health or family service agency. If a single parent was supset about the divorce, I could refer him (or her) to the University of Rhode Island Cooperative Extension. Yet, if a single parent came to me and told me his (or her) child was kidnapped by the other parent, I could do nothing. Lawyers could do nothing. Judges could do nothing. When I reprint "The Resource Guide for Single Parents and Their Children," I would like to be able to add the resources made available by the passage of S. 105.

Chairmen and honorable members of the subcommittees, I appreciate the privilege of speaking to you today and urge that all present give favorable consideration to S. 105 in view of this testimony.

PREPARED STATEMENT OF JEANNETTE I. MINKOFF, PH.D.

The adversary process pits one parent against the other in custody disputes, forcing each parent into extreme positions. The children become weapons in the intensified battle, and the parents inflict further pain on one another through them.

Children frequently blame themselves for their parents' breakup. They feel the pain of separation from the noncustodial parent and sometimes construe it as rejection. They are forced to adjust to a new routine and often a new lifestyle in unfamiliar and frequently reduced surroundings. They notice behavior changes in parents and perceive, and are frightened by, the lack of love and support. They are fearful of the angry altercations between their parents. They are preoccupied and struggle to please both parents, or they make a choice and live with intense anger and resentment from the other parent.

Because of the adversary process and the exacerbation of emotions caused by extensive litigation, the parent who is not awarded custody frequently feels stripped of all parental rights. His visitation with the children, even if spelled out by the court, depends upon the good will of the custodial parent, and there is generally little good will left. In extreme cases, the noncustodial parent feels justified in taking matters into his or her own hands and kidnaps the children. The emotional and psychological damage to the children is irreparable.

I have been providing a service to the courts in Monroe County, N.Y., for 12 years, to assist in dissipating the anger of parents in custody disputes and helping parents to communicate and compromise, and ultimately work together in the children's best interests. I believe that the concept of joint custody, which several States are contemplating in pending legislation, is the most helpful focus to use in working with disputing parents. When people feel they have some recourse and do not feel shut out of their children's lives and stripped of their parental rights, they are more able to moderate their emotions, control their behaviors, and remain invested in their children's lives.

I wholeheartedly support this bill to cut down on the traumas to children caused by parental kidnapping, and feel that this protection of children's rights, together with the Uniform Custody Act and the enlightened movement toward joint custody provisions in a growing number of states, will ultimately help serve the best interests of our children.

I hold a Doctorate in clinical psychology and am a practicing family therapist. I have been employed for the past 12 years by the Monroe County Probation Department in Rochester, N.Y. as a family counselor. My present title is Probation Family Services Coordinator. In addition to performing family counseling services and staff training I supervise the special investigations unit with the probation department. This unit receives referrals from the Supreme Court and Family Court of the 4th Department in the 7th Judicial District, State of New York which order investigations, evaluations and family counseling regarding child custody and visitation matters before the courts. The matters involving custody come to us before decision and disposition, the visitation matters are generally referred after a custody decision has been made. This paper is based on my contacts with more than 100 cases where parental kidnaping has taken place prior to referral. In only four cases did kidnaping take place after court ordered investigation. When matters are referred regarding visitation, the parties have generally been through a long and tiring adversary proceeding with extended litigation. The principals are so hostile and angry with each other that they have forgotten about their parenting responsibilities to their children and are in fact using the children to hurt and punish each other and often appear to have divorced the children in the process of dissolving the marriage.

After the custody decision is rendered the noncustodial parent is even more angry in that he or she has moved from the marital residence and has been ordered to pay support for the children which most often necessitates a dramatic change in life style. The noncustodial parent feels he or she has been denied rights as a parent and is prepared to fight for liberal visitation.

Even if a visitation schedule is incorporated into the Court decision there is often a complete break down in communications between the parents because of the following reasons:

1. Both parents are distressed by the change in living circumstances.
2. Support payments are often not made on time and so the custodial parent denies the noncustodial parent visitation.
3. The custodial parent makes other plans for the children which would interfere with the visitation agreement, sometimes because the other parent brought the children home late after the prior visitation.
4. Often visitation is denied because the other parent has introduced the children to another partner and the custodial parent feel he or she may lose the children to the other party.
5. Visitation is sometimes denied because of alleged nondiscipline and allegations that the noncustodial parent participates in only enjoyable and entertaining activities with the children while the custodial parent is the total child care person who does the disciplining, cooks the meals, washes the clothes, etc. and is constantly building up anger over his responsibilities.
6. The custodial parent may have a legitimate complaint about the type of activities the ex-spouse involves the children in, together with an objection of his or her physical care of the children, perhaps alleging the visiting parent is

not feeding them properly or permits the children to play outdoors and get dirty or that the children are unsupervised in their activities.

The fighting between the parents continues and the non-custodial parent begins to think about kidnapping the children. Let us look at what is happening to the children during the adversary proceeding with extended litigation and the parents angry, assultive behavior which the children have been and still are exposed to:

1. Children almost always blame themselves for the parents' break-up.
2. They feel the separation and loss of the other parent in the family system.
3. They are forced to adjust to a new routine and often a new life style in unfamiliar surroundings.
4. Children notice behavior changes in their parents and are frightened by the lack of love and support and become fearful of the angry altercations between their parents.
5. A child is often asked to choose which parent he wishes to live with. Children are afraid to choose and ultimately struggle to please both parents, or on some occasions they make a choice and then must live with intense anger and resentment from the other parent.
6. Children often become depressed and withdrawn and keep their feelings of happiness, sadness, fear deep inside because of the fear of further rejection.
7. Children become preoccupied and lose their powers of concentration and motivation in relation to school and sometimes isolate themselves from peers.
8. Because of intense emotional and psychological pressure the child or children may strike out at one or the other parent.

Now, a child who has already suffered emotional trauma over the divorce and separation is suddenly and secretly kidnapped by one of his parents. This may be before a final hearing when a custody determination will be made or after a court decision regarding visitation or after being denied visitation rights by the other spouse. The kidnapping parent intensely feels that he or she has been denied equal rights to the children. In some cases it can be established that the perpetrating parent is emotionally unstable and is not functioning within normal limits. In such cases the person is clearly convinced that his aberrant behavior is justified.

The psychological damage to the child is often severe and is sometimes irreversible and irreparrable: to wit:

The parent almost always takes the child on a regularly scheduled visitation and does not return him or picks the child up on the way home from school or while the child is outdoors playing. This is done without explanation and without a plan or prior discussion.

Children have described their fears, sadness, loneliness and hysteria upon realization they were not being returned to their home. Children have told me they begged, pleaded, and cried in an unsuccessful effort to persuade the kidnapping parent to return them. They know almost immediately that they have been lied to and sense the parent is in violation of the law.

Children have stated their concern and worry about the other parent and sense the agonizing terror the other parent would feel when they were not returned.

The kidnapping parent often explains to the child that he took him/her because he loves them so much and children begin to wonder about love—"do people have to hurt someone to love someone", a direct quote from a 6-year-old boy.

Children of divorce have already suffered anxieties over the changes in the family system and the way it functions. Children develop coping mechanisms and attempt to find pleasure and security in a familiar environment, a special toy, peers, a teacher, a friend, etc. and when a child is snatched from his familiar environment all of a sudden even these special little things are out of his grasp. The child is stripped of everything he has had to identify with, including the other parent. The child or children are now forced into a new environment, new school, and new home with nothing familiar but the clothes on his back. The children are then instructed to change their name and they are entered into school with falsified school transcripts. The children are almost always told they cannot play with friends because they may divulge something of their past and be detected.

A 7-year-old child told me he could not remember his new name or the falsified name of the school he was instructed to say he last attended. He explained he did a lot of erasing on his papers as he continued to write "his own name".

Another child told me she begged to call her other parent on her birthday as she missed the parent terribly and knew if she were home there would be a party.

A little boy, age five, told me his "taking parent" did not have much money and they had to get clothes and shoes for him from a "big box on the street."

All of these children were told by the kidnapping parent they would adjust and be happy soon. Unfortunately none of them ever reached this promised plateau.

When cases are referred to my department we begin to counsel both parents and children in the process of the investigation. We work with the parents toward an agreement in the best interest of the children. I believe this professional intervention has reduced child kidnappings appreciably in our area.

I support without reservation S. 105, the Parental Kidnapping Act introduced by Senator Wallop. The Uniform Child Custody Act also serves the best interests of children and families. In addition, I would urge all of you to consider for all States a "Joint Custody Law" as proposed in bills currently before legislatures of California, Michigan, Iowa, and Wisconsin. I see this as offering an excellent way to reduce kidnappings, especially if a professional counseling unit were provided as an aide to the court.

When parents are able to reestablish communication with regard to the best interest of their children, they can begin to function jointly as parents This counseling service would offer divorcing parents a non-adversary forum where they could air their frustration, dissipate their anger and begin to coordinate their care of the children.

PREPARED STATEMENT OF MICHAEL W. AGOPIAN

Dear Mr. Chairman and subcommittee members, I teach Sociology and direct a research program examining parental child stealing in California. As a result, I have a great interest in the proposed legislation which you are considering today. I would like to address three aspects relating to parental child stealing: first, the scope of parental child stealing, second, preliminary results from my research into the patterns of parental child stealing, and third, specific comments relating to S. 105.

I. THE SCOPE OF PARENTAL CHILD STEALING

The problem of child custody when parents are divorced or separated exists even when the parties make an effort to resolve their differences amicably. For many persons, however, divorce is not a clear resolution that immediately severs relations. Divorce dissolves the marriage but it does not erase the past nor create an unrelated future. One repercussion from divorce has been an increase in parental child stealing—the abduction of a child by a parent in violation of a custody decree as defined in California.

There are a maze of social problems surrounding this activity. Parental child stealing is rooted in increased social mobility. Children can be armed, brainwashed, or emotionally damaged. The child may be used as a mechanism to inflict pain and suffering on a former spouse. It can be devastating to the parental victim, causing personal trauma and disorienting one's lifestyle. Parental child stealing can be viewed as a form of child abuse.

One of the major problems in addressing parental child stealing is the scarcity of accurate statistical information. It was initially believed that these were isolated cases but that is not the case and there is every indication that parental child stealing is increasing rampantly.

Official figures are usually incomplete, combined within multiple offense categories, or nonexistent. The FBI does not compile information to assess the extent of parental child stealing on a national basis. There are many unreported instances of parental child thefts. Data from the California Bureau of Criminal Statistics found 136 adults arrested during 1977 and 208 arrested in 1978 for parental child stealing. The Los Angeles County District Attorney's Office screened 400 cases of parental child thefts between January 1975 and April 1979 of which 240 were rejected for prosecution. The Los Angeles Sheriff's

Department reported 60 cases during 1977 with that figure increasing to 86 in 1978. The Los Angeles Police Department reports 163 cases for 1977 and the 1978 figure increased to 190 instances.

I strongly suspect that the official picture of parental child stealing suffers from substantial underreporting. I estimate that there are between 75,000 and 120,000 cases of parental child thefts each year in America. And indications suggest that such thefts are increasing rapidly, perhaps as many as 20,000 cases each year.

The extent of child stealing can only be crudely estimated because law enforcement information is incomplete, but the potential for child thefts can be better guaged. Divorce is rapidly increasing in America. In 1978 Americans divorced nearly 1,200,000 times. The number of children involved in divorce has nearly tripled between 1960 and 1976 from 500,000 to 1,100,000 children. Such a rapid increase in divorce signals the potential for an alarming epidemic of parental child thefts. Recognizing that not every divorce contains the social chemistry which spawns child stealing, the potential for victimization nevertheless is greatly increased.

The number of one-parent families has rapidly increased between 1960 and 1978. By 1978, 19 percent of families with children were maintained by one parent—17 percent by mothers and 2 percent by fathers. And single fatherhood increased 32 percent between 1970 and 1979, with nearly 1 million children under the age of 18 living with their male parents.

II. FINDING FROM RESEARCH INTO PATTERNS OF PARENTAL CHILD STEALING

I am completing a research project that examines 91 cases of parental child stealing from the Los Angeles County District Attorney's Office between 1977 and 1978, the first year of California's criminal law dealing with parental child stealing. I would like to summarize some of the preliminary findings from the study titled "Patterns of Parental Child Stealing":

(a) Children between 3 and 5 years of age were most frequently taken as found in 34 percent of the cases. Children between 6 and 8 years of age were taken in 22 percent of the thefts. In only 36 percent of the cases was the child returned to the guardian.

(b) Precipitating circumstances to a child theft found that 33 percent are perpetrated under the guise of an ex-spouse exercising weekend visitation, 17 percent are taken from a babysitters care, and 12 percent during day visitation.

(c) Parental child stealing is a low risk crime. In 79 percent of the cases offenders were not arrested or in custody at the time of investigation. Child stealing charges were filed for prosecution in 55 percent of the cases.

(d) In 23 percent of the cases a bench warrant was issued for the offenders arrest. Charges were handled as a misdemeanor in 17 percent of the cases and in 10 percent of the instances charges were dismissed in the interest of justice. In 6 percent of the cases the victim refused prosecution.

(e) The child's home is the location of the offense in 67 percent of the cases while the school is the crime site in 12 percent.

(f) In 43 percent of the cases there was some form of communication between offender and parental victim after the theft—72 percent of these were by telephone and 16 percent by mail.

(g) Child thefts are well distributed throughout all seasons of the year: Fall 30 percent, summer 29 percent, winter 22 percent, and spring 21 percent. Friday is the most perilous day for parental child thefts with 21 percent of the cases. Saturday and Sunday each recorded 17 percent of the cases. In 43 percent of the cases thefts occurred between 2 p.m. and 8 p.m.

These findings are preliminary and should be individually examined by additional research. I would like to enter into the record three articles that present in detail findings from my research.

[The articles can be found in the appendix.]

III. S. 105 PARENTAL KIDNAPING PREVENTION ACT

The attraction of interstate flight to evade law enforcement will continue to spawn parental child stealing unless uniform national provisions for child custody are implemented. State laws are frustrated by persons snatching a child and moving to another jurisdiction.

The present legislation requires every State to recognize and enforce custody decrees if such decrees are in compliance with the prerequisites of Federal legislation. It stipulates that full faith and credit be given to child custody determinations by States throughout the United States. This will bring a nationwide uniformity of criteria for upholding custody determinations, what was attempted by the Uniform Child Custody Jurisdiction Act. The definitions in this full faith and credit section are clear and sufficient for a workable policy. It should prove most valuable in a Federal effort to reduce interstate controversies over child custody. Therefore, I fully support the full faith and credit aspects of this legislation.

The proposal to utilize the Parent Locator Service should be an important aid to deterring interstate abductions. I also feel that a custodial parent should be exempt from the service charge for the use of this service (42 U.S.C. 653 should reflect this if it is intended by S. 105).

The definition of parental kidnaping in the legislation is clear. However, section 1203 defines a child as 14 years of age. This should be made uniform with other statutes and increased to 18 years of age. This would then protect all children subject to custody determinations. Also in section 1203 under Defense for Prosecution, if a person suspected of parental kidnaping returns the child unharmed within 30 days after the issuance of a bench warrant for arrest this would constitute an absolute defense. This would allow short-term thefts and frustrate efforts by local authorities. Although this provision would induce the return of children it has no deterrent value if it remains as a total defense. I feel this section of the legislation should be deleted.

The requirement that parental victims notify local law enforcement authorities within 90 days should be increased to 120 days. This additional time period will enable local remedies to be exhausted and allow legal procedures for returning the child to be pursued, thereby reducing self-help methods that may create further conflict.

The legislation states that while a crime may have been committed if there is a concealment for 7 days or restraint for more than 30 days coupled with interstate of foreign transportation and violation of custody rights, the FBI cannot investigate until 60 days has elapsed from the date local authorities are informed and Parent Locator Service assistance is requested. This 60-day requirement is excessive. The FBI should intervene on evidence of a Federal crime without any 60-day delay. If there is no evidence of interstate flight the FBI should investigate after 30 days of notification to local law enforcement authorities. This would allow local resources to be exhausted before Federal agencies are used.

I commend your efforts to address this complex and difficult problem. I strongly support S. 105 and feel that with some of the amendments noted in my analysis it will be an effective response to the growing problem of parental kidnaping in America.

Senator MATHIAS. Our next witness will be Ms. Constance Grogan, of the Upper New York Synod of the Lutheran Church of America.

STATEMENT OF CONSTANCE GROGAN, UPPER NEW YORK SYNOD OF THE LUTHERAN CHURCH IN AMERICA

Ms. GROGAN. I am really grateful to have an opportunity to speak to you and as you have said, I am representing our church, the Upper New York Synod of the Lutheran Church, but I am also representing myself as a parent who has had a snatched child. The church would like my presence here to be an expression of their support for this bill. It is their position that the passing of such a bill could be instrumental in improving the quality of life for these children.

It is also important to me that other parents don't have to go through the kind of heartache that I have. I am one of those parents who has legal custody. I have gone through all the court procedures. I have all the nice pieces of paper, but they have not been too terribly

effective. My child Caleb was 5½ when he was snatched and next month he will be 7. So it has been about 18 months that I have been without my child. In his case there are misdemeanor warrants out on his father's arrest for child snatching and child support, nonchild support, both in upper New York State. But to this point there has been no help in actually doing anything about those charges.

The parent locating system has not been of help even though there are support payments that are not being made.

It may be of little value to go into the kind of blood and guts details of my own specific situation. I think it is maybe more important to point out that my case is similar to so many of the other cases that have been related to this committee today. We have gone to the extreme of trying all of the legal means to change the situation and haven't been able to.

Myself, I have felt the despair and the humiliation and the insult and the tremendous emotional and financial strain that all of the other people here have spoken about. But I cannot imagine what my child goes through.

I would like to relate to you a story of something that did happen before he left, a year before he left. He was 4½ years old. His father had liberal visitation. He had gone to visit with his father. When he came back, he was his usual exuberant, crazy self. It was late in the evening when he came back. We went through the usual routine of getting ready for bed, taking a bath, reading stories, getting six glasses of water, whatever 4½-year-olds go through, the kind of routine that little kids put their parents through to go to bed. He was fine until we turned off the light. Then I saw a total change come over him in an expression of tremendous fear. I guess the darkness for them is a time when they have to deal with some of those fears. But he just began to sob uncontrollably, and couldn't express to me what he was feeling.

I didn't know what was wrong at the moment. I just held him for a long time and rocked him. As he began to feel calmer he was able to express to me the fears that he was feeling. He said that his father had said that he was going to be taking him, in this case to Puerto Rico, and that he would never be able to see his mother again.

Senator MATHIAS. Not as a reward, but clearly as an exclusionary matter?

Ms. GROGAN. As exclusionary, that was what the child said to me. At that particular time custody had been reopened because I was planning on moving. That may have been what initiated it as far as fears for the father went.

I myself was afraid and angry, and as a parent wanted to say, you know, he is a rat or something, I guess. But I reassured Caleb that it couldn't happen, that he would be OK, that he could be with both of his parents, that the court system was there to help us and that it could help us. We talked about his situation in this case and it was difficult as it is difficult for most divorced children. I tried to explain to him how that situation worked, so it would make him more comfortable. He did begin to feel more comfortable and more reassured from my promises. So, I got him tucked into bed. I held his hand until he went to sleep.

The next day, this was like I say, when he was 4½, he was back to being his exuberant self. We went on from there. When it came time

for visitation he was enthusiastic to go with his father. I was comfortable to let him go. It wasn't actually until a year after that, on a summer vacation, that Caleb's fears came true and he was taken.

Senator MATHIAS. He was then about 5½?

Ms. GROGAN. Yes; he was 5½; that is right. He will be 7 next month. So, it has been about 18 months.

You know, I don't know what that does to him. Dr. Minkoff's testimony has touched me because I realize what he has to go through, the kind of emotional strain.

Being a religious person, I look to the Bible for answers. I try not to use that as a crutch, but it does seem that King Solomon had a better system and we haven't improved much in 3,000 years.

If you remember that story, there were two parents, two mothers——

Senator MATHIAS. I remember it very well.

Ms. GROGAN. Yes.

Senator MATHIAS. How would you have chosen?

Ms. GROGAN. I don't know, because you see one of the great things about that story is that neither one of those mothers were particularly morally outstanding people. They were both harlots. I think if one chose on moral standards, neither of them would have made it. I see in that case Solomon had great wisdom because his choice was to cut the baby in half, just as you would make a property settlement. But he didn't give that child to the mother that wished the child cut in half.

Senator MATHIAS. To the other one.

Ms. GROGAN. He gave it to the one who wished that child to be whole under any circumstances, even losing the child. That is a terrible decision for a parent to make, to give up a child, because we love them.

Senator MATHIAS. But isn't it the only decision that a real parent can make?

Ms. GROGAN. Yes, it is better than having them so twisted inside that they are no longer human beings.

I think that our present system forces us to cut babies in half; that the parent who is the least interested in the wholeness of the child, the parent who has the most money, the parent who has the least interest in legal systems is the one who can have the child. I think that we need to look at that system. I appreciate the fact that the Government is slow in making legislation in these areas of domestic issues. I think we are all concerned about our freedom and our own personal privacy. But the kind of prejudice which allows these kind of abuses within a family which would never be tolerated between strangers needs to be changed.

I really don't have any kind of credentials except representaive of the church to back up my concerns. I am very aware by reading in the newspapers that our world is filled with children who have tremendous needs and who are starving and probably have more need than my own child does, whom I think is fortunate in the sense of being clothed and fed, but that doesn't change what is happening to him emotionally.

I guess basically I just want to say that I want to support the bill. I hope that we can change it so that our kids aren't cut in half any more.

Senator MATHIAS. You understand, just so that we have the record clear, and I am subject to correction by counsel on my right hand and on my left hand, that this bill does not introduce a Federal Solomon. It does not cloak the Federal Government with the powers or the attributes of Solomon. What it really seeks to do is to usher both parents into the presence of the Solomons who we hope already exist in the 50 States, but at least it does bring them both in the presence of Solomon. That is what we have been unable to do, what apparently in your own personal case you have been unable to do.

Ms. GROGAN. That is true. I don't think it is a panacea. I hope that it will stop repeated snatchings.

Senator MATHIAS. I think your recollection of the story of Solomon is a very appropriate one in this case.

The law, as Blackstone said, "Is the supreme expression of the ethic of the Nation." At least it seeks to be the supreme expression of the ethics. Therefore, we really have to look at motivation, feelings, as we try to shape the law so that it does express the ethics of the Nation.

I ask you this question which I said earlier would be hard to ask Mr. Clevenger, who has had the personal experience, and it is hard to ask it of you because you have had the personal experience, but what do you think the prime motive is? Do you agree with the earlier testimony that it is almost always revenge or do you think it is an excess of parental affection, however misguided, however it tortures the child?

Ms. GROGAN. Well, I don't think it can be categorized all into one lump as revenge. I think that in a lot of cases that is part of it. I think that love is one of those words which we never quite get defined, but I cannot believe that love is a motive. It may be that need is a motive, but I don't think it is love.

Senator MATHIAS. You would say that if love were the motive it would be illustrated by the story of Solomon.

Ms. GROGAN. I hope so.

Senator MATHIAS. Thank you very much.

Ms. GROGAN. Thank you.

[The prepared statement of Ms. Grogan follows:]

PREPARED STATEMENT OF CONSTANCE H. GROGAN

I am grateful for this opportunity to be a witness in favor of the proposed bill on child snatching which is under consideration at this hearing.

I appear before you for a twofold reason. First, as a representative of the Upper New York Synod of the Luthern Church in America. I am a seminary student of that Church, presently completing an intern pastorate in Jamestown, New York. Through my presence at this hearing, the Upper New York Synod of the Lutheran Church in America wishes to express its support of the child snatching bill. It is the church's position that the passing of such a bill could be instrumental in improving the quality of life for these children.

Secondly, I am here as the parent of a kidnaped child. The Family Court of New York State awarded me custody of our son, Caleb, in 1976. Caleb will be 7 years old next month but I have not seen him since August 1978 when he was 5½ and went on vacation with his father.

There is really little difference between the details of our situation and that of any other parent who has had his or her child snatched by the other parent. I have suffered pain, despair, humiliation, insult, and tremendous emotional and financial strains. And God only knows what Caleb has been through. I can only imagine, by recalling an incident that happened a year before he was taken.

He came bounding up the stairs and into my arms. Caleb, then 4½ years old, was home after having spent the weekend with his father.

Since it was fairly late in the evening, we started our usual rituals for bedtime—bath, stories, glasses of water, and a plethora of other things only a 4½-year-old could think of. But things went smoothly, that is, until the lights were out.

Suddenly, I was confronted with a different child, Caleb began sobbing and shaking. I knew he was afraid, but he was too upset to tell me what was wrong. For some time I sat on the edge of his bed cuddling him in my arms. Then as he calmed down he told me of his fear. He said, "Daddy is going to take me to Puerto Rico and I'm never going to see you again." Despite my own fear, I reassured him. I told him it would not happen and he would always be able to spend time with both of his parents. After this and further assurances, Caleb seemed more content. He snuggled under the covers and asked me to hold his hand. Soon he was fast asleep.

By the next day, Caleb was his usual boisterous self, and when it came time to visit his father again, he went off enthusiastically.

It was a year later when Caleb's fears became reality. He went on vacation with his father and never returned. My attempts to work within the present legal structure to obtain some security for my child had failed.

Our present legal system is more primitive than that of King Solomon's court 3,000 years ago. If you recall in one biblical story, there were two women who claimed to be the mother of the same baby. King Solomon suggested that the child be cut in half. However, he did not give the child to the parent who wanted the baby cut in half. He gave the child to the mother who was concerned with the wholeness of the child. Our system, on the other hand, protects the parent who has the least concern for the wholeness of the child. Our system guarantees the baby will be cut in half for the selfish pleasure of the parents.

Our Government has been slow to legislate events which take place within the intimacies of personal relations, and well it should be, for we do not want to give up our present freedom or personal privacy. But the type of prejudice which allows abuses within the family structure that would never be tolerated between strangers, needs to be changed.

I have few credentials to back my concern. I am only the mother of a child, and that is not such an unusual feat for a woman. After all, isn't one of the problems of our world the fact that there are too many mothers and too many children?

There are too many children in our world who shrivel in the grips of starvation; there are too many children who are stunted in the wake of abuse, their bodies broken and deformed; and there are too many whose inner spirits are twisted until they no longer resemble human form.

My child, however, is fortunate—he is fed and clothed and educated—at least I think he is. He is hugged and loved—I think. But how could I know?

I can no longer imagine how Caleb is doing, but still he must be better off than most of the children of the world. So why do we bother you with 25,000 to 100,000 lost children—stolen children—who at least are wanted by someone and fed by someone?

We struggle to change the laws because Caleb and those other children are human and they too have human rights. They have the right to some security. As they are now, they are less than pieces of property. My car is better protected. They are children and should have the right to contact with a loving parent and should not be cruelly and inhumanly separated. The need for security is so basic to all human beings that it is difficult to believe anyone would disagree. Admittedly, many children do not even have their most basic needs met and we are frustrated because we can not help, but here we can help.

It is within our reach to guarantee the rights of these children through the passing of these bills. The structure is already available to put the bill in action. All we we need do is to care enough to make the bill a law.

SUMMARY

I appear before you for a twofold reason. First, as a representative of the Upper New York Synod of the Lutheran Church in America. Through my presence that church body wishes to express its support of the child snatching bill, and encourages swift action to make the bill a law.

Secondly, I am here as the parent of a kidnaped child. I also strongly urge all effort in making this bill a law as quickly as possible in order to end this outrageous violation of our children's rights.

Included with my report is an article I wrote on child snatching which was published in the The Lutheran magazine.

The bill presently under consideration is desperately needed to open other channels to find these children.

[From The Lutheran]

NOW, I THINK

CHILD RIGHTS FOR CALEB

(By Constance Grogan)

The United Nations, in their crusade for human rights, has declared this the "year of the child." But for me, it begins and probably will continue to be the year without my child.

Last August, my 5-year-old son, Caleb, went on vacation with his father. Caleb never returned. He was kidnapped by his father and the two of them have disappeared without a trace. Does this child have human rights?

Caleb was two when our marriage ended. The next 3 years were spent in a string of court hearings to decide who would have custody. Family court spends much time and concern on such cases. There are tests for the psychological stability of the parents, home studies to evaluate which environment is best suited for the child, and even a string of witnesses to extol the virtues of one parent or the other.

In our case, after this long and emotionally draining affair, Caleb's custody was "awarded" to me with liberal visitation to his father. It seemed that now there was hope for some stability and new beginnings in our lives. But in August, I found out how wrong I could be.

Family court has no jurisdiction outside of its own State, and even in the State where custody is awarded, kidnaping your own child is only a misdemeanor. There is nothing the police can do to help Caleb or me. My only redress is to hire a private investigator and find him myself.

Even if he is found, I am faced with the decision of what to do. The only way to get Caleb back would be to steal him. He would again be moved and unsettled with no goodby and no time for explanation. In order to "protect" him, I would be forced to deprive him of any contact with his father. I would never be able to trust Caleb out of my sight. I would have to teach him to distrust all adults because one of them might be a private investigator trying to steal him back.

Life seems to get so tangled with our brokenness and inability to live as God created us that we are often left to make a decision between two very poor choices. If my child is found, I will have to ask myself as a Christian, what is the most loving thing that I can do for all the people involved? Should I steal my son back or should I leave him with his father? This is my dilemma and I must be prepared to live with my decision whatever it may be.

But the situation goes far beyond my own decision: it cries out with the question of children's rights. Do Caleb and an estimated 25,000 other children in our country who are in the same situation have any human rights? Do they have the right to have some security? Do they have the right to have contact with a loving parent? Do they have the right to be protected from cruel and inhuman treatment?

How can the church help? We can reach out to these broken families and help them to remain a part of the church family. Only in showing God's love and forgiveness can the anger and hatred be healed. Only in this healing can our children be saved.

I implore the members of the Christian community to help these children gain their rights. In the last few years there have been several Federal bills drafted to help alleviate the problem of parental kidnaping, but they continue to be tabled due to lack of interest. The most recent of these unsuccessful efforts was led by Representative John Moss (D-Cal.) and Senator Alan Cranston (D-Cal.). Your letters to them or to your own congressmen will help.

Will Caleb have human rights? Yes, if we take time to care about our children.

Senator MATHIAS. Our next witness is Mrs. Virginia Burt.

Mrs. Burt, we have other witnesses. We have your written statement and it will be included in the record in full. If you can brief it for us we will appreciate it.

STATEMENT OF VIRGINIA BURT, BALTIMORE, MD.

Mrs. BURT. Oh. I can't do that at the moment.

In February 1974, I knew I needed help when it took 10 minutes to decide whether 5-month-old Patricia Ann should wear the pink or blue stretch suit. So, that afternoon, I called the Dutchess Family Counseling Services in Poughkeepsie, N.Y., and made an appointment for the following week, even though my husband did not think it would help me.

As time went on, I know my husband and I had to separate. After a battle royal, I screamed I wanted a divorce—out of a bad marriage. So, Bill agreed, but said we should draw up our own separation agreement. It gave him Mary Ellen, our eldest child, and the house, and it gave me Patricia Ann and $60 a month child support. My attorney said, "No." When Bill threatened me with a knife if I did not sign it, at my attorney's advice, I took my children and returned to Baltimore.

I felt so free, so full of hope and joy that at last I had done it—had gotten out of a hopeless situation. Still, I had pangs of guilt. After all, these were his children too. He missed them and Mary Ellen missed him.

Against my attorney's better judgment and that of many friends and family, I allowed him liberal visitation, even though he was giving me little support and suing me for custody. I could not keep the children from him. There were some bad moments. Mary Ellen wanted to be with him. I took her to a psychiatrist who plainly stated that she was not my child; she was brainwashed. It was not "I need my daddy," it was "My daddy needs me." The doctor told me I was to keep her with me for as long as I could stand it, and eventually she would have to go with him.

Bill announced the week before Thanskgiving that he wanted to see the children the following weekend. He would be down Friday. He was going to spend Thanksgiving reminding himself I was his enemy. On Friday, November 29, 1947, at 5:45 p.m., I dressed 6-year-old Mary Ellen in her prettiest party dress and new fuzzy coat. Fifteen-month-old Patricia was full of smiles. She had just started walking and was so proud of herself. They were going out to dinner.

Eight p.m. came and no Bill; no children. At 10 p.m., I called my attorney. Finally, at 11:30 p.m., I called the police. I told them my story, and they asked if I had custody. I told them no, the hearing was to be December 16. They said there was nothing I could do. I was a wreck. All weekend it rained, the house creaked, and my mother and I just sat and waited. Monday, I received ex parte custody.

I returned to Poughkeepsie, N.Y., with my little piece of paper that meant nothing. New York would not recognize a Maryland custody agreement. The Poughkeepsie police helped my mother and I break into my home. Bill had taken $10,000, the pots and pans, china, his guitar, stereo set, clothes for himself and the children.

I hired an investigator. We thought he might be in the area because the checks were being cashed at various bank branches, but we couldn't

find him. We questioned the people at the college where he was a biology professor, but no one knew anything. He had left them at mid-semester. I was sure that one friend, Priscella might know where he was, she claimed she didn't, and when the investigator tried to question her, she called the police and claimed harassment.

Finally, I persuaded the juvenile division of the Poughkeepsie police to talk with Priscella. She claimed at one time she had been in touch with him, but didn't know where he was now. There was nothing I could do. The FBI could not help; the district attorney's office couldn't do anything; missing persons practically ignored me. Social Security would only help if I needed support money; I needed the children. It was hopeless.

What my husband had done was legal—no laws had been broken. The police, no government agency would help me. It was a domestic affair and the police did not want to get involved. I spent 4 months in Poughkeepsie looking for my children. Every day I would call the investigator. I would walk into town, going to the familiar spots where I had spent time with them. I looked at every face, every child. One night I was on my second drink, and I suddenly realized that Bill wanted to destroy me. I said, "No." I poured that drink down the sink, and the next day, I called the family counseling service and resumed seeing my counselor.

In April 1975, it was time to say good-bye to Poughkeepsie to start a new life. I could not keep my home there; it was going to be foreclosed. I may never see my children again, but I could not and would not die. It was not easy starting over. No one wanted to hire me. I had not worked for over 6 years, and there was always the question of my children and the strange looks I received when I said they were with their father. The only answer was to do temporary work until I could find something permanent. Then Koppers Corp. offered me a job.

On August 28, 1975, my cousin told me of a young man she had seen on TV on a talk show, "Panarama." His wife had disappeared with his son. He, too, knew the frustration of lawyers, investigators, law enforcement agencies, and just not knowing where your children were. His name was Arnold Miller, the founder of Children's Rights, Inc. At last I knew someone who was also victimized. I had some one to talk to. Arnold had taken a seemingly hopeless situation and was turning it into a victory. He was going to change things, educate people about the loopholes in our laws and make them see the need for change. Arnold got me involved with the issue. Through him I appeared on several Baltimore and Washington talk shows, NBC News, and on "60 Minutes." I was active in Baltimore with the issue between 1975 and June 1977. I gave several workshops and talked before groups.

Then it happened. Late in May 1977, "60 Minutes" reran the segment on child stealing. On Saturady, June 4, 1977, I was on my way to a picnic. The mailman caught me as I was going out the door. There was a large envelope from CBS News. Inside was a letter telling me that Bill Burt, my children, and Priscella were in Pittsburgh, Pa. I was hysterical. I couldn't believe it. After 2½ years, I knew where they were.

At last I had found them, but now what was I to do? I called my attorney, John Healy, in Baltimore. I know I had several ways to go.

I could have gone in and resnatched the children and brought them back to Baltimore; I could leave them alone and forget the whole thing; or I could try to do it legally. After much deliberation, I came to the conclusion that I couldn't resnatch them. I knew how confused they would be. I was sure Mary Ellen would be angry and afraid. Four-year-old Patricia would have no recollection of me. I was certain she thought Priscella was her mother. I wanted someone to be the overseer in this situation. I did not feel I could handle it alone.

It was then that my attorneys Mr. Donald Saxton and Mr. Gordon Fisher in Pittsburgh accepted the case. They worked diligently to find the right solution. He was the Honorable Patrick Tamilia, chief judge of the juvenile division of the Court of Common Pleas of Allegheny County, Pa. They were able to convince him that the act of child snatching as an act constituting "depravation" under the Juvenile Act.

This interpretation enabled the judge to issue ex parte order directing the sheriff to recover the children placing them in custody of the Child Welfare Department and to enable him to then hold hearings on the issue of dependency and custody. The utilization of this procedure was extremely important in this particular instance because habeas corpus proceedings in Pennsylvania require prior notice and it was believed that the pattern of conduct of my husband would result in his absconding from the jurisdiction before the court could physically bring the children within their control.

On September 29, 1977, almost 4 months after I received the letter from "60 Minutes," the sheriff picked up my children from Priscilla as she and Patricia walked Mary Ellen to the school bus stop. A caseworker was in the car, and the children were taken back to the children's shelter so that we could meet. Needless to say, they were terrified.

Mary Ellen repeatedly told the caseworker she hated me, never wanted to see me, that it was a dirty trick that I had exposed them on "60 Minutes." Some of the children from her school witnessed the show.

I had expected this. After almost an hour, I finally got to meet my children after nearly 3 years. Eight-year-old Mary Ellen was angry and made many accusations. Patricia, who was 4, just sat and watched wide-eyed. I let Mary Ellen be angry, and then explained a few things to her about what had happened and why. Within 20 minutes, I had a hug and kiss from both my children. Mary Ellen told me that there were times when she would just stop and think of me, and she was glad to see me. If nothing else, they "no longer had to hide." Patricia said, "I guess I have two mommies."

The following day a hearing was held before Judge Tamilia, and he ordered a 2-week visitation for the children with me in Baltimore, and then there would be a custody hearing. After 2 weeks, I enrolled Mary Ellen in public school and Patricia in a day care center, as I had to go back to work. The next 10 months were hectic. Not only was I busy getting to know my children, working, scheduling three counseling sessions a week for all of us, but I had the custody trial to deal with.

Between September 1977 and July 1978, I made eight trips to Pittsburgh for psychiatric evaluations at Children's Hospital, pretrial hearings and the trial itself. The trial lasted 8 days in all and was scheduled in four 2-day sessions beginning in March and ending in

July. This has been a very costly ordeal. Not only did I have my attorney's fees, but also airplane fare, lodging, and the loss of time from work. I was fortunate to be able to stay at a women's shelter in Pittsburgh. Each trip cost me about $300. My funds have been exhausted.

Finally, in July 1978, Judge Tamilia issued an order placing Patricia in my custody and Mary Ellen in her father's custody. We were all to undergo psychiatric counseling, Mary Ellen, Bill, and Priscella in Pittsburgh, and Patricia in Baltimore. There was to be frequent visitations for both children. Harbel, a mental health clinic seeing Patricia and me, felt it would be detrimental to Patricia's well-being to visit with her father at this time, so a court order was issued to terminate Patricia's visitation.

Mary Ellen has visited us once since her return to her father in August 1978. I requested her on several occasions, but Bill did not send her despite the court order. She is 11 now, and when I talked with her at Christmas, she is doing well in school and having fun. She is busy with her life. Some day, I hope our relationship will be better. At least I know where she is. I can send her gifts and letters and talk with her. Patricia is 6 now. She loves school, has many friends and is happy. We have a good relationship. She is free to talk about her daddy and sister and the way things are. We both miss Mary Ellen and look forward to the day when things will be different.

In the meantime, my husband, we are not divorced yet, is appealing the case.

I have been very fortunate. Without the exposure on "60 Minutes," I still would not have known my children's whereabouts. My attorneys in Pittsburgh, Donald Saxton and Gordon Fisher, have worked diligently on this case. My legal fees are around $20,000. They have not pressured me for payment. I make token payments each month. We are still waiting for the judge's final decision concerning getting back some of the funds taken by Bill when he took the children.

Judge Tamilia in Pittsburgh has shown a great deal of wisdom in his opinions and the court orders he has issued. We have had the full cooperation of the sheriff's office, the airport authorities, and the child welfare department, in Pittsburgh. My employer, Koppers Corp., has been most understanding of my situation. Despite my absenteeism they have continued me on their payroll. Harbel, a mental health clinic in Baltimore, has given me a lot of support, and their fee has been minimal.

The irony is that with all of my resources to this point, and I feel that they are well above average, my husband could take my children, disappear, and no one would help me find them. There are still no laws to protect me or my children. Child stealing is still legal. Until there is Federal legislation making this act illegal, thousands of other parents and I live with the fear that our children may be whisked away by an unscrupulous parent, perhaps never to be seen again.

Child stealing hurts everyone. The victimized parent is left with an emptiness. I feel death is easier to deal with. In death there is finality. In child stealing, you continuously search, never knowing, never sure if tomorrow, maybe they will be back. The parent who steals is constantly on guard, hiding, can never be entirely honest, always living with the fear that perhaps his secret will be discovered.

The child hurts most. He is the target of his parents' hostilities. He loves both parents and is confused by the absence of one. He is often lied to, told his mother is dead. Sometimes his name is changed. There can be no roots. Old friends, family, familiar places must be forgotten.

I wholeheartedly endorse Senator Wallop's S. 105, the Parental Kidnaping Prevention Act.

With one out of four marriages ending in divorce, there will be many angry parents absconding with their children. We need help to resolve this matter.

Senator MATHIAS. Mrs. Burt, have you had an opportunity to read Senator Wallop's bill or to discuss it?

Mrs. BURT. Not entirely.

Senator MATHIAS. But you have discussed it and the purpose of it, either with Mr. Healy or Mr. Miller or some of the people with whom you have been working in your situation?

Mrs. BURT. Yes.

Senator MATHIAS. As you say, you have been extremely fortunate because you had the unusual intervention of a national television program which came to your assistance.

Mrs. BURT. Yes.

Senator MATHIAS. Do you see that the mechanisms provided in the Wallop bill would in effect give to every parent in your situation, the kind of help that you received from an unusual circumstance by which you were singled out, almost like a bolt of lightning, to be the subject of a "60 Minutes" interview?

Mrs. BURT. I have to admit I am not entirely familiar with Senator Wallop's bill. I feel that if there is some intervention, if the child can be found and put it in the courts, I think it would be helpful, most helpful.

Senator MATHIAS. A great many attorneys with whom members of the committee and committee staff have discussed this problem, this kind of problem, have been puzzled over just how to help their client—what to do. Your lawyers apparently developed a legal theory that worked.

Mrs. BURT. Yes.

Senator MATHIAS. A theory of deprivation.

Mrs. BURT. Yes.

Senator MATHIAS. Would you have any objection if they were to make available to the committee, to be part of this record, the pleadings in your case, the court papers in your case?

Mrs. BURT. I would be honored.

Senator MATHIAS. Could you give us copies or could you ask them to provide the committee with copies of that?

Mrs. BURT. The judge has not yet written up his statement. We are still waiting.

Senator MATHIAS. Well, I think we would be interested even prior to a final decision in the case, to have the pleadings, the papers submitted on your behalf.

Mrs. BURT. Of course. Yes. That can be done.

Senator MATHIAS. Which I assume are a matter of public record.

Mrs. BURT. Yes.

Senator MATHIAS. I don't know whether this is a "sealed" case; if it is, we obviously don't want to violate any rules of the court that may

exist here. If the pleadings are a part of the public record in the case, we would appreciate your help in getting copies of those proceedings.

Mrs. BURT. I will get you copies of the proceedings.

[The material referred to can be found in the appendix.]

Senator MATHIAS. I think you have made a very complete statement, one that gives us a case history which will help to guide us in this matter.

One of the issues that has been discussed at some length throughout this whole day is what happens prior to a custody decree, and that is your case. All of these events that you have been describing occurred prior to a decree. I think this is one of the situations that has to be addressed by the bill.

So, your testimony will help to insure that as we review this legislation and try to perfect it before it goes to the full Senate for judgment, it will cover not only a postdecree situation, where there is a court which has made a custody award, but also the situation of the parent who is trying to protect the rights and the welfare of a child prior to the time that a court has acted in relation to that custody situation.

So, that is a particular contribution that you have made here today. We are grateful to you. I know it was not easy for you to come and make this statement today. It is a very personal problem and a very personal subject. In your case and Mr. Clevenger's case, as with the other parents who have been here and been willing to share their own experiences, it does help us to put the picture together, but that doesn't mean it is any easier for you to do.

I am delighted to hear that you have had cooperation from the various social services in the city of Baltimore. I follow their activities with a great deal of interest because some part of their funding does come from Federal sources, and I have a responsibility to make sure that the Federal investment in those services is in fact a good investment for the people of Maryland. From your testimony, I judge that it is.

Mrs. BURT. Yes.

Senator MATHIAS. You have confirmed my already high opinion of the leadership at Koppers for having this kind of a personnel policy in this situation.

Thank you very much for being here.

Mrs. BURT. You're welcome.

Senator MATHIAS. Now our final witnesses of the day, Prof. Russell M. Coombs of Rutgers University School of Law, Prof. Wallace J. Mlyniec and Ms. Nancy Lynn Hiestand of Georgetown University Law Center.

PANEL ON LEGAL ASPECTS OF BILL:

STATEMENTS OF RUSSELL M. COOMBS, RUTGERS UNIVERSITY LAW SCHOOL; WALLACE J. MLYNIEC, AND NANCY LYNN HIESTAND, JUVENILE JUSTICE CLINIC, GEORGETOWN UNIVERSITY LAW CENTER

Dr. MLYNIEC. My testimony will be brief.

Senator MATHIAS. All of your statements will be included in full, in the record, at the conclusion of your oral testimony.

Dr. MLYNIEC. What we have decided to do in light of that is to comment on some of the amendments that have been suggested today, especially by Senator Wallop and some of the other panel members.

I would also alert the staff that we will be including at a later date more comprehensive remarks on these amendments to add to your record.

[The additional material referred to can be found in the appendix.]

Dr. MLYNIEC. Referring to Senator Wallop's testimony on page 16, he lists six amendments that he would recommend. I would like to comment on just a few of those.

We have no problem with No. 2. I would assume that a good prosecutor, faced with this very obvious affirmative defense, would dismiss the charge anyway. On the other hand, it may take significant resources on behalf of the snatched parent to get a lawyer and litigate a claim that would be dismissed under normal circumstances because of his affirmative defense. So, we would have no problem with No. 2 being included.

With respect to No. 3, generally speaking, a felony is considered a crime which has a penalty of more than 1 year. While we understand the requirements of treaties which prohibit extradition unless there is a felony involved, we would just suggest that if the crime is raised to a felony, to enable the treaty provisions on extradition to be imposed, we would suggest that the penalty be kept minimal.

The reason for that is as we see this bill, and one of the reasons we like this bill is that it is a proper attempt to endorse what we law professors like to call our "federalism." It is the proper exercise of the Federal Government enabling States to have their individual State judgments endorsed.

We do not see the——

Senator MATHIAS. Fifty Solomons.

Dr. MLYNIEC. We do not see——

Senator MATHIAS. Not one single monolithic Solomon.

Dr. MLYNIEC. Exactly.

Because of that we should not have each of those Solomon's second guessing another Solomon when the ties to the original Solomon are more appropriate. Consequently, rather than being a tool of the harmed parent to get back at the harming parent, we see the criminal provisions themselves as part of this package to endorse the State provisions.

Therefore, we would not like to see a large penalty placed on those parents who take their children across national boundaries, but we would like to see it made a felony, just so the treaty provisions could be endorsed.

The one I am more concerned with and which I find astounding that all of our great minds or less than great minds had missed was No. 4, the provision of care for a child once he or she has been picked up by Federal agents. I would just caution that the committee look at the hearings on H.R. 3434, which is currently in conference to see what has happened in State welfare agencies with respect to children that are taken from their parents by State welfare departments. I believe someone has to do this. I believe the Federal Government should not establish shelters for children; but some agency of the Govern-

ment should be empowered by this statute to enter into contracts with the State governments to provide for these children.

I would suggest that the language be very, very clear that these children shall not be placed in institutions. These children, when they are first taken out of the custody of this parent, and now snatched again by the police, should be placed in foster homes; not shelter homes, not group homes, not institutions, not detention facilities, but foster homes with parents who are skilled at caring for troubled children.

Ms. Hiestand would like to comment on a few other of the amendments that have been made, Mr. Chairman.

Ms. HIESTAND. It seems clear from the testimony today that of the three major sections of the bill—the full faith and credit provision, the parent locator service provision and the criminal provision, the one which apparently has no opposition is the first, the full faith and credit. We are glad to see that this section of the bill was changed from the prior legislation, taking out two subsections which we were concerned might emasculate the bill.

We commend S. 105 and would just caution this subcommittee and the Congress from including amendments which might deter from the idea of full faith and credit. Language which may seem simple like "Public policy of the State," and "if it was done punitively," can be easily picked up by courts and used against the full faith and credit provision. Congress should not—given the concern that they have to assist courts in enforcing their own decrees—legislate the way for getting around that concern.

With respect to the criminal provisions, Senator Mathias, you were concerned as to what would happen if the snatching occurred prior to a custody decree. I think in most cases—in 39 States there would be no problem. But the parent could go into the State and get the custody decree in those 11 States which have not passed the uniform law. There might be a problem and perhaps that loophole could be taken care of by language to the effect, "An existing custody degree," or "Initiation of custody proceedings."

Senator MATHIAS. I do not want to interrupt you. I want to save questions for the panel, but right on that point, those 11 States could become kind of ghettos, could they not, for parents——

Ms. HIESTAND. Who do not have a custody decree.

Senator MATHIAS. Who would realize that they are sort of beyond the pale in those States.

Ms. HIESTAND. Yes.

Senator MATHIAS. So, they would all hone in on one of those locations?

Ms. HIESTAND. Yes. It is troubling because on the one hand, we do want to emphasize that the criminal sanctions are a last resort and, therefore, to trigger those sanctions the parent should have used the court process. That probably would be satisfied by the initiation of the process, even though the full custody order has not come down.

In closing, we applaud the bill and thank you for permitting us to testify today. We will answer questions when Mr. Coombs is finished.

Senator MATHIAS. The Chair wants to take the opportunity to welcome the return of a native or very nearly a native, a former member of the committee staff.

Mr. COOMBS. Thank you, Mr. Chairman.

Senator MATHIAS. You have been missed. If you had been here and on duty, I might not have had to vote against the recodification of the Federal criminal laws. [Laughter.]

Mr. COOMBS. Well, I have missed the committee, too. You are doing some excellent work on the Criminal Code bill, whichever view of it eventually prevails. I very much admire also, Mr. Chairman, the role that you are playing in the processing of S. 105.

Senator MATHIAS. Well, when we get to the recodification, we may have to call you back into active duty.

Mr. COOMBS. Thank you, Mr. Chairman. I teach in the Law School at Rutgers University in Camden, N.J. My areas of teaching include family law and criminal law and procedure. But I do want to make it clear that in my appearance today I am not speaking on behalf of Rutgers, any other organization, or any person other than myself. I strongly support enactment of S. 105.

Senator MATHIAS. Your record with the committee is such that speaking for yourself is adequate passport for any place you want to go.

Mr. COOMBS. Thank you, Mr. Chairman. I do think this bill is essential if child snatching is to be prevented and controlled. The Uniform Child Custody Jurisdiction Act is excellent legislation. It is highly desirable that more States enact it. There are other things States need to do also in improving substantive, procedural and remedial law in the areas of child custody and visitation and their enforcement.

But, no matter how well the States do their job, there is an essential Federal role. As Mr. Alexander said in his testimony, the Uniform Act is being variously interpreted and applied by the States. The resulting problem will continue to exist unless the key concepts of the Uniform Act are, as is done in S. 105, made matters of Federal law so that the mechanism exists to see that the interpretation on the key points do become consistent.

However, recognizing that there is an essential role for Federal legislation to play, I think it has to be kept in mind that the State's role is essential too. As you put it, Mr. Chairman, the bill is silent or neutral on certain matters of substantive family law and other things that are the domain of the States. I think it is very wise that you have the bill in that form.

Senator MATHIAS. I don't have it. Senator Wallop has the credit for having fashioned it in that form.

Mr. COOMBS. Yes, he deserves enormous credit for this bill. I think some vigilance on the part of the subcommittees, and the committees, and the Congress as this bill is processed, some vigilance will be necessary to resist attempts to involve the bill in matters that ought to be retained as the exclusive area for State law to control.

In that respect, Mr. Chairman, I would like to request the inclusion, in the record of the hearing, of a letter that the Justice Department wrote on September 20, 1978, to Congressman Rodino, and the attachments and footnotes that came with it, because they include some very good discussions of what the proper Federal and State roles should be and an explanation of how important aspects of the legislation are designed to operate.

May that be included in the record, sir?

Senator MATHIAS. It will be included in the record as will your statement.

[The material referred to can be found in the appendix.]

Mr. COOMBS. Thank you, Mr. Chairman.

An example of the sort of possible amendments that I recommend that you resist, because they would involve the Federal Government and Federal law in matters that ought to remain the province of the States, is the recommendation for creating an exception to the duty of interstate enforcement of custody orders for "punitive decrees." Professor Bodenheimer had recommended that, but she now has withdrawn the suggestion. I don't know if anyone has actively promoted it any more, but I would strongly recommend against it.

Another possible amendment in that vein that I would recommend against is one incorporating some concept of "clean hands," as an exception to the duty of interstate enforcement. Again, application of that concept would involve judgments on the same sorts of matters that substantive custody determinations depend on, and it would necessarily make those things matters of Federal law. In addition, I think it would weaken the effectiveness of this bill as a prevention of child snatching, because there would always be this possible inducement to relitigate a custody order by trying to get another State to determine that a "clean hands" exception or something like it could be satisfied in a particular case.

There are other suggestions being made for amendment of the bill, Mr. Chairman, that I would like to comment on because I think that they are not wise. I would like to explain briefly why those suggested amendments are unsound. Then there are some criticisms being aimed at the bill that I would like to respond to because I don't think the criticisms are sound.

There have been several related suggestions dealing with the coverage of visitation rights in the bill. The bill now covers frustration of visitation rights, as well as abuse of visitation rights, equally with custody rights, and I think that is wise and proper. The legislative history is also extremely clear that the bill means what it says when it includes visitation rights equally with custody rights.

So, one amendment that has been suggested, to require that visitation rights be enforced interstate, is totally unnecessary. I recommend against that amendment because it is just surplusage. And, a related suggestion that I think also ought to be rejected is one that would create a loophole in the duty of interstate enforcement providing that a second State would be given some leeway to amend the visitation order of a first State. That, again, would offer an inducement for any parent who was dissatisfied with the visitation order in one State to go seek appellate review, in effect, in the trial court of another State, and would weaken the effectiveness of the bill.

Likewise, there has been a suggestion that the criminal provision should apply to visitation only where there is concealment. That would also be an unwise amendment.

In the first place, the amendment is unnecessary because the proper safeguard against overuse of the criminal provision in cases where visitation is violated is prosecutorial and investigative discretion. Actually, there is going to have to be heavy reliance on investigative

and prosecutorial discretion to avoid overuse of this criminal provision, even where custody is violated. Even more discretion will have to be used, of course, as to visitation, but I think it is an adequate safeguard.

In the second place, where there is no concealment, it ordinarily will not be appropriate to use the Federal criminal sanctions, even where it is custody rather than visitation that is being interfered with, except in rare instances. One can imagine a case where there is a child snatching in violation of custody rights and the whole mechanism works the way it is supposed to with civil enforcement and perhaps with State contempt proceedings or State criminal proceedings, whatever, and the situation is brought under control; and then there is another snatching of the same child and a kind of a recidivism occurs under those circumstances. That is the only sort of case where the Federal criminal provision should be used in the absence of concealment.

Well, if a case occurred that was just the same except that it involved violation of visitation rights rather than custody rights, again, once the other mechanisms made available by this bill and by State law for interstate enforcement, contempt, what have you, State criminal sanctions, once those are shown to be inadequate, to deal with repeated violation of the right to visit a particular child, then if there is no Federal criminal sanctions provided here, there is no remedy whatsoever.

In other words, just as you need a last resort of Federal prosecution in a very few custody violation cases, you need that last resort in a very few visitation violation cases also, although there would still be fewer visitation than custody cases, I would think, where the use of these investigative and remedial provisions of Federal criminal law is appropriate.

The subject of these criminal provisions more generally is one where I think the bill is now attracting a great deal of unjustified criticism. The attacks that the Justice Department and the FBI now are making on the criminal provisions really are not sound when their reasons are analyzed carefully, in my opinion.

I don't want to be misunderstood. It happens that the civil provisions of the bill are the vital part. The civil provisions are a much more important part of this bill than the criminal ones, for these reasons. The effects of the civil provisions should be that very few cases will even come within the jurisdiction of the FBI, and that very few of those on which the FBI legally would have jurisdiction will justify the exercise of discretion by the FBI to get involved. At each step of the process a large number of cases should be weeded out that don't have to be dealt with by the Federal criminal law.

First, the civil provisions will reduce the incentive that law now offers to child snatch, to shop for a different forum, to obtain relitigation of a decree and so forth. So, less child snatching should occur simply by the existence of the civil provisions.

Second, in addition to eliminating those incentives the civil provisions offer a positive deterrent, because the effect of the civil provisions will be that a child-snatching parent will be forced to go back to the State whose court order he has disregarded and face the same judges again when he wants to ask for visitation or any other favorable

treatment from the civil court. So, there is an element of deterrence there.

Then, in the few cases where prevention and deterrence fail and child snatching does occur, the parent locator service should be capable of locating most of the parents that hide. The use of the parent locator service is highly desirable here. I don't think that the people from the administration who opposed its use made the case persuasively at all. After all, they remain willing to seek dollars by using the parent locator service. The dollars are not supposed to be an end in themselves. The dollars are supposed to be for the benefit of children. If they are willing to pursue the benefit of children in that monetary way, I don't think they can say that some different privacy interests justify failure to make their service available in custody and visitation cases as well.

Finally, where the parent locator service fails and where prevention and deterrence have failed, even then, if punishment is needed, the State contempt power is available for punitive purposes, and in some States, State criminal statutes are available for punitive purposes. So, the only appropriate role for the use of these Federal criminal provisions is in finding the parents and children when the PLS can't do so, and, in the rare case where criminal punishment of a parent is going to do a child more good than harm, and where the case is so aggravated that State criminal penalties and contempt penalties aren't adequate, then it might be appropriate to have a Federal criminal prosecution and trial and punishment. Those will be exceptional cases. After all, it is no benefit to a child to have the earning power of his parent impaired by criminal conviction. It usually is no benefit to the child to have his parent incarcerated.

Still, there is a proper role for the Federal criminal law and for the investigative powers of the FBI. The objections that the Justice Department and the FBI raise should be discounted. Some of the objections are simply unsound; others do deserve some consideration, but not the weight that the Justice Department would lead you to believe, and they ought to be considered outweighed.

For example, one of the arguments that the FBI and the Justice Department make is that they dont' have the expertise to get involved is deciding who ought to have custody. They don't have sociologists, I think they said, and so forth. The bill solves that problem. The bill already keeps them out of that area because the commission of the Federal offense doesn't depend on a conclusion as to who has a right to custody in the abstract; a previous court order is required. The FBI simply relies on a previous judgment of a State civil court that parent A is the one that is entitled to custody.

Now it is true there is a good cause defense. They object to the vagueness of that standard. But, I think they should not be concerned because in order for them to have jurisdiction there has to be a court order in every case. Good cause is not an alternative basis for FBI jurisdiction; on the contrary, it is a defense. In other words, there has to be a court order in every case for the FBI to be involved and the good cause element is actually an escape valve. It is a hook on which they can hang their exercise of discretion not to get involved in a particular case.

They told you today, Mr. Chairman, that they have been using a very comparable concept of a real, genuine threat of harm in applying their jurisdiction under UFAP. Again, they are using it as an escape valve from a crime in which they have clear jurisdiction.

This would be a comparable situation. They ought to welcome the inclusion of the good cause element because it illustrates the fact that they are going to have to exercise discretion in deciding in which cases they will get involved.

Then they complain also about the definitions of "restraint" and "concealment" in this criminal statute, and say that they don't think they ought to have to apply vague concepts like restraint and concealment. That is not a persuasive argument in view of the fact that the Justice Department strongly supports the criminal code bill. The criminal code bill uses very similar terms in the general kidnaping statutes and they don't consider those terms too difficult to apply in that situation. Of course, it is true also that the FBI applies a number of concepts like scheme and artifice to defraud under existing law that are much more difficult to define than the concepts of restraint and concealment.

They have another argument to make on that point. Apart from the substantive definition of the conduct, they say that even the jurisdictional criteria under proposed section 1738A, which they do have to consider in deciding whether there has been a criminal offense under S. 105, are things that the FBI shouldn't have to consider. They complain about being asked to determine whether notice and opportunity to be heard were given to the civil custody litigant as a basis for the court order that they are being asked criminally to enforce. They complain about the phrase "threatened with abuse," and so forth.

Well, in the first place, as I say, there are other tough questions in all the Federal criminal statutes and daily they handle comparable issues.

Second, well, I guess the most important point, to cut this a little short, Mr. Chairman, is that this statute is actually unique in solving that problem for the FBI, because in this case there will almost always be a civil court order that will not only have determined which parent should have custody, but will also be based on a determination that the jurisdictional requirements have been met.

In other words, everything that the FBI needs to know is true, in order to know that an offense has been committed under section 1624, including the jurisdictional criteria, will already have been determined by a State civil court. When the matter is referred to the FBI, they normally won't have to go behind that State civil court judgment.

They also make the argument that the Federal criminal provisions would have limited value as a deterrent. They say, first of all, that you are only adding to an existing State deterrent in the contempt and other State criminal laws in this area. Second, they say that if you really mean we are going to investigate these cases and find children but we usually are not going to prosecute, then that is no deterrent.

I think that their argument misunderstands the role of this criminal provision in the entire scheme of S. 105. As Professor Mlyniec explained today, the relationship is an integral one. The State civil deterrents such as reducing visitation, and the State criminal deterrents of

contempt and State prosecution work only when you can locate the parent and child. That is the role for the Federal criminal provisions.

In other words, you need Federal investigation in order to make the State deterrent fully effective. Once you make the State deterrent effective, then you don't need the Federal criminal prosecution.

Senator MATHIAS. You may have Solomon waiting for you but unless you get into the presence of Solomon it doesn't matter.

Mr. COOMBS. Yes, that is right. Once you get in his presence, then, yes, you have a good State deterrent. So their argument is not sound, in my opinion.

They argue also that there is something inappropriate somehow in investigating cases in which you don't really plan to bring many prosecutions. But that is not sound. The UFAP statute is based precisely on that approach, that the FBI's role is to find people and then when the States can prosecute satisfactorily, that is all that happens and the UFAP cases are never brought to Federal criminal trial. That is exactly what would be done under this bill. Why is it so similar to UFAP in this respect? Because again, it is a problem created by our Federal boundaries among States. That is exactly the necessary Federal role.

Those are the arguments they make that I see as really unsound. They make a couple of other arguments that have value, but that ought to be discounted, I think, from the weight that they give them. They mention correctly that having a parent arrested in the presence of a child can be traumatizing. And, as I mentioned, so conviction and punishment of a parent can be harmful to the interest of a child in a particular case.

Also, of course, it takes resources to involve the Federal Government in this process. They are right in making those arguments. They are wrong, though, about the weight to be given them. Those are reasons why we shouldn't involve the Federal criminal authorities except where it is absolutely necessary to do so. But they are not reasons to exclude the Federal criminal role entirely.

The ways that you limit the Federal criminal role are two. One is to draft a statute in such a way as to limit it, and that has been done in this case. This status is carefully drafted with that in mind. I think the way the ABA treated this criminal provision shows that that association recognized this virtue of Senator Wallop's proposal.

On a single day in August 1978, the ABA voted down one provision federally to criminalize child snatching and voted up another one, and for excellent reasons. One of them wasn't tied, in the integral way that this criminal provision is, to civil provisions determining the validity of the custody rights that were to be enforced by Federal criminal law, so it was rejected.

The other one was tied to such civil provisions, and it was endorsed by the ABA. And, in addition, I think the other limitations on the involvement of Federal criminal authorities that are in this bill influenced the ABA to approve the criminal provision similar to S. 105, but to reject a broader one.

So, I would recommend to you that when you get suggestions that the criminal provision be expanded up to age 18 that it be given felony status even for violations strictly within the United States that the FBI be involved immediately under certain circumstances, I think

that those suggestions run afoul of the very policies that led the ABA to approve a very limited role for the Federal criminal authorities in this area but to disapprove an excessive role.

Finally, the Justice Department claims that it is offensive to make the return of the child unharmed a total defense to prosecution for conduct after that conduct has become completely criminal.

You mentioned quite correctly, Mr. Chairman, that there is a precedent in present Federal law. You referred to section 1623 of title 18, on false testimony. The Congress in 1970 created a defense of recantation so that even after one is guilty of perjury, if he corrects his false testimony, under the proper circumstances, he is not guilty any more.

Also, I might mention there is another example in the Criminal Code bill——

Senator MATHIAS. I am going to have to interrupt you. We have a rollcall vote on. I am not cutting you off, because I have technical questions for all members of this panel. They do relate to the technical aspects of the law. I am going to ask you to respond to those and to supplement whatever you may wish to say further in the light of your mutual testimony, for the record.

I will hold the record open for 2 weeks. The staff will provide you with the written questions.

I want to admit to the record at this point a statement by the distinguished Senator from California, Mr. Hayakawa, and the distinguished Senator from South Carolina, Senator Thurmond.

[Statement of interested Senators and Congressmen are listed in the appendix.]

PREPARED STATEMENT OF WALLACE J. MLYNIEC AND NANCY LYNN HIESTAND

My name is Wallace J. Mlyniec. I am director of the Georgetown Juvenile Justice Clinic. With me today is Nancy Lynn Hiestand, a member of our staff. For the last 7 years, the Juvenile Justice Clinic, along with other national and local organizations, has sought to protect the rights of minors and advance the cause of fair treatment and full development for children. To that end we have concerned ourselves with the plight of children whose needs have been ignored by either Government agencies or parents. On the basis of our experience in the area of child development, we laud the efforts by Congress to deal effectively with the problem of child snatching.

Child snatching has become a major problem in the United States because of an inability or unwillingness to recognize and enforce State custody decrees, the absence of State or Federal criminal sanctions for kidnaping and the difficulty and expense encountered in locating snatched children and relitigating custody issues. The magnitude of this problem is evidenced by extensive media coverage, the formation of citizen organizations to combat the problem, and the letters Members of Congress receive daily from constituents seeking assistance to locate their missing children. The tragic stories resulting from child snatching have been reported to Congress in testimony by the Honorable Charles E. Bennett, by Mr. Arnold Miller of Children's Rights Inc. and by others in previous hearings on similar legislation as well as today. We believe, as they do, that the provisions of this bill will be instrumental in assisting the States to enforce the rights of their citizens.[1]

Although the field of domestic relations is generally regarded as being the proper province of the States, child snatching is beyond the State's capacity to control. As in other forms of kidnaping, the perpetrator frequently flees across State borders and sometimes across international borders. Law enforcement officials in States in which child snatching is a crime are often frustrated in their efforts to enforce their codes since they have no authority to cross their

[1] For a history of congressional action in this area, see Coombs, "The Snatched Child is Halfway Home," Family Law Quarterly (Winter 1978).

borders to search for the offending parent and snatched child. Extradition is usually a lengthy and futile process.

Based on outmoded beliefs concerning child development, full faith and credit has seldom been accorded to sister State custody determinations. Consequently State courts' contempt power has been largely ineffective. Finally, because the tools for locating absent parents have been virtually nonexistent, no State could enforce its laws and judgments, and sister States have been unable to assist them even if they choose to do so. We believe this legislation, and particularly the Senate version, S. 105, is the proper exercise of Federal authority to assist States and their citizens in eliminating the barriers to effective enforcement of domestic relations laws.

FULL FAITH AND CREDIT PROVISIONS

Central to this statutory scheme is the enactment of legislation extending full faith and credit to State custody decrees if such decrees meet certain requirements. It must be understood that section 1738A does not impose criteria upon which a State court must determine custody within its own borders. It merely designates for national policy reasons which judgments must be recognized across State lines. Thus, the legislation in no way attempts to impose Federal jurisdiction in that area of the law which has been traditionally left to the States, but simply assists States in enforcing their laws.

On several occasions the Supreme Court has examined the effect of the full faith and credit clause of article IV of the Constitution on State court child custody decisions.[2] The Court has never specifically found a violation of the full faith and credit clause under the circumstances in those cases; nor has the Court ever rejected the notion that full faith and credit has a role in custody determinations.[3] Justice Felix Frankfurter had been the most strenuous advocate for the nonapplicability of the clause in custody cases. Believing that changes in conditions may occur at any time, he argued that the best interest of the child rather than strict procedural rules should be given precedence. It is precisely this best interest consideration which now requires that full faith and credit be applied in these cases. The prevailing opinion today is that next to physical safety, continuity is the most important factor in raising a child.[4] Constant or traumatic changes do not enhance a child's development.[5] By enforcing the obligation of full faith and credit Congress will be demonstrating its preference for stability and be acting in the best interest of the child.

Congress is specifically given the power to change the prevailing uncertainty regarding full faith and credit by article IV of the Constitution. Article IV states in part that "* * * Congress may be general Laws prescribe the Manner in which * * * [State] Proceedings shall be provided, *and the Effect thereof.*" [Emphasis added.] Despite this clear enabling language, Congress has exercised its power only once, in 1970, when it enacted 28 U.S.C. 1738. That statute provides that "judicial proceedings of the Courts of any state * * * shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken." It has been noted that "there are few clauses of the Constitution, the literal possibilities of which have been so little developed as the Full Faith and Credit Clause * * * Congress has under the Clause the power to enact standards whereby uniformity of state legislation may be secured as to almost any matter in connection with which interstate recognition of private rights would be useful and valuable."[6]

The use of a statute to enforce full faith and credit in custody cases was suggested in 1964.[7] The clear, literal language of the Constitution allows Congress to do that even though it has not chosen to do so in the past 190 years.

[2] See *Ford* v. *Ford*, 371 U.S. 187 (1962); *Kovacs* v. *Brewer*, 356 U.S. 604 (1958); *May* v. *Anderson*, 345 U.S. 528 (1953); and *New York ex rel. Halvey* v. *Halvey*, 330 U.S. 610 (1947).

[3] In fact, the dissent in one case suggested that the majority implied that full faith and credit must be given absent a showing of changed circumstances. See *Kovacs* v. *Brewer*, *supra*, at 611 (Frankfurter, J., dissenting). [Emphasis added.]

[4] See generally Goldstein, Freud, Solnit, "Beyond The Best Interests of the Child" (1973).

[5] Thus, the premise underlying Justice Frankfurter's objection to the application of full faith and credit to child custody cases has been found to be invalid and any argument against its application on the basis of the child's best interest must necessarily fail.

[6] E. Corwin, "The Constitution and What it Means Today," 207–08 (12th ed. 1958).

[7] Ratner, "Child Custody in a Federal System," 62 Mich. L. Rev. 795, 827, and n. 153 (1964).

To illustrate the argument that the provisions of S. 105 fall strictly within the full faith and credit clause and do not impinge on State rights, consider these examples:

Case 1.—Two parents get divorced in State A. The mother is given custody of the children. All jurisdictional requirements are met. The father snatches the children and moves to State B. The courts of State B must give full faith and credit to the State A decision and enforce it within its borders.

Case 2.—A mother snatches her children before a custody order has been rendered and flees to State B. State B grants her custody although she and the child have only been there for 3 weeks. Because the legislation des not impose jurisdictional requirements upon the States with respect to purely internal matters, State B may do this. Its order remains the law within its borders until modified. However, the father may go to the courts in State A, the children's home State, get a custody order, section 1738A(c)(2)(A)(ii).[8] Because the judgment of State B does not meet the statutory jurisdictional prerequisites, it need not be given full faith and credit by State A. The father can then take his custody order from State A to State B and State B must give full faith and credit to that custody order because it meets the prerequisites of this bill. Under the supremacy clause article VI, section 2 of the Constitution, the Federal full faith and credit requirement takes precedence over the State B policy of enforcing its own judgments.

PARENT LOCATOR SERVICE

The Parent Locator Service was created in 1975 to assist in the collection of child support payments and thus reduce welfare claims. (Codified at 42 U.S.C. 653.) S. 105 would extend the use of this service to search for snatched children and abducting parents. This provision of the legislation will assist courts and aggrieved parents in locating missing children and effectuating State court decisions. Furthermore, the criminal provisions of the bill provide that a request for assistance must be made to to the service 60 days before the FBI can become involved in such an investigation thus minimizing the use of that agency. In those cases where the Bureau is eventually involved, the PLS information will be useful to Bureau agents in their subsequent investigations.

CRIMINAL PROVISIONS

The idea of imposing Federal criminal sanctions on a parent who is attempting to obtain custody of his own child is a troubling one. Nevertheless, this concern must be balanced against the psychological and physical harm to children that may be prevented by the enactment of such sanctions. The rights of nonoffending parents and their limited options for regaining custody in the absence of this legislation must also be considered. Although Congress clearly has the authority to enact such legislation, its effectiveness will depend on extreme sensitivity in its application. We believe criminal prosecutions should only be contemplated as a last resort; we also believe that the full faith and credit provisions of the bill would be less effective without the criminal provisions.

For example, a parent could snatch his or her child from State A to avoid a court order and move to State B. As long as he did not petition for custody in State B he would be safe until the nonoffending parent went to State B and petitioned the court to enforce State A's order. Under the full faith and credit provisions, the court would be required to do so. However, the snatching parent could avoid the decree in State B by moving to State C. Only through the operation of these criminal sanctions can the parent be arrested and brought back to State A. Hopefully, the existence of these criminal sanctions coupled with the full faith and credit requirements will make child snatching an unattractive alternative.

A bill to impose criminal sanctions on "child snatchers" was first introduced by Congressman Charles E. Bennett in 1974. That bill met severe opposition, es-

[8] In personam jurisdiction can be obtained over the mother if the exercise of such jurisdiction comports with due process requirements. Her activity within the State—snatching the child—is sufficient contact with that State to subject her to its jurisdiction. Cf. *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). In fact, Professor Ratner argues that merely being the parent of a child who lives in the State seeking jurisdiction is sufficient contact with that State—even if the parent has never been in that State. See Ratner, supra, note 6 at 826. The Supreme Court, however, has recently indicated that the exercise of jurisdiction in such a case would violate due process. See *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978).

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pecially, from the Justice Department, for three reasons: First, the penalties were thought to be too draconian (up to life imprisonment); second, there was concern about the number of cases that would arise under the statute; and third, it was believed that the FBI should not become involved in "family disputes."

All of these objections have been met by this legislation. The offense has been reduced to a misdemeanor; thus, authorized imprisonment cannot exceed 6 months. As noted above, the number of cases that the FBI would be involved in has been reduced by the 60-day waiting period. During this time many children may be located by the PLS. Others will have been returned voluntarily. The final argument—that the FBI should not get involved in family matters—was misplaced from the beginning and is further diminished by the full faith and credit provisions. Neither the FBI nor the Federal criminal courts need to resolve family disputes under these provisions. Rather, a parent who snatches his child, and who risks severe emotional trauma, physical harm and life-long psychological damage to that child, will or can be arrested. The victim child can be returned to his rightful home, where the local domestic courts may well have already decided he belongs. The local domestic courts can make whatever modifications in the custody arrangement it sees fit. Neither the FBI nor the Federal courts will play any role in that decision.

These criminal sanctions give parents the option of either snatching their children and being arrested themselves, or abiding by State domestic relations court decisions regarding the custody of their children. Consequently, the criminal provisions like the other provisions assist the State court's jurisdiction rather than usurp it.

CHANGES FROM PREVIOUS LEGISLATION

In the course of our testimony 2 years ago on the legislation then pending before Congress, we suggested two revisions which we believed would further the goals of the bill. The first proposal would have deleted from the full faith and credit provision certain subsections which, in our opinion, might have emasculated the legislation. Those subsections permitted a State to avoid enforcement of a child custody determination made by a court of another state if:

(1) The primary basis for the child custody determination was punishment of a contestant and not the best interests of the child; or

(2) The child custody determination [was] inconsistent with a strong public policy of the former State.

In the typical situation the State (State B) wherein the snatched child is kept will be far from the witnesses and other evidence which resulted in the first custody judgment. (State A.) In order for a State B court to determine whether the original order was punitive, not in the best interests of the child or contrary to public policy, it would either have had to relitigate the issue, perhaps absent crucial witnesses, or order transcripts of the State A trial. This result would have been contrary to the purpose of the statute. There is no reason to believe that a State court will not act responsibly in passing judgment. If errors arise, the State's own appellate process is a better forum in which to remedy those errors than the courts of another State. Full faith and credit has to mean what it says. The Federal Government, in creating a national policy to protect children and to further protect the integrity of State judicial process, should not legislate the very means of avoiding the goal.

For the above reasons, we are pleased to see that those provisions include in the last sessions' bill have been deleted from the present legislation.

Our second proposal would have added an affirmative defense to the criminal sanctions of prior proposed legislation. That defense would have prohibited a person from claiming entitlement to the criminal provisions of the act if no proceedings to determine custody had been initiated in the court of the State from which the child is restrained. The substance of this defense is presently contained in S. 105, section 1203(a) on page 12 and we applaud its inclusion in the bill.

As noted earlier, we believe that criminal sanctions should be used only as a last resort and that State courts should take the lead in resolving family problems. The addition of the above defense furthers that end and solves the problem that arises when the injured parent seeks to use the criminal sanctions in a purely vindictive manner. We must remember that this legislation is principally

to benefit children, not parents, and to effectuate State court judgments concerning domestic relations. Permitting an injured spouse the right to use the criminal process to obtain the child and punish the other spouse is less desirable than permitting the State court to act and then enforce its judgments through full faith and credit. So long as a good faith attempt by the parent to protect the child rather than harm the spouse is demonstrated, the statute would be satisfied.

For the above reasons, we find S. 105 preferable to Congressman Bennett's bill, H.R. 1290, which does not contain a similar defense provision.

In conclusion, we reaffirm our support for the goals of this legislation. We believe it is superior to prior legislative attempts and is an excellent bill. Although it will not completely eliminate the phenomenon of child snatching, it should substantially diminish the frequency of its occurrence and assist our States in enforcing their court decisions.

PREPARED STATEMENT OF RUSSELL M. COOMBS

A. INTRODUCTION

Mr. Chairman, my name is Russell Coombs. I teach in the law school of Rutgers University in Camden, N.J. My teaching duties include a course on Children and the Law, and a seminar on Child Custody and Visitation Problems Involving More Than One State. I also am a vice chairman of the Committee on Custody of the ABA's Family Law Section.

My remarks today are not, however, offered as representing the views of any organization or any individual other than myself.

I enthusiastically support prompt enactment of the bill under consideration, S. 105, the "Parental Kidnaping Prevention Act of 1979." If the problem known as "child snatching," and the related problems that arise from child custody disputes involving more than one State or nation, are to be brought under control, it is essential that suitable Federal legislation be enacted. S. 105 is unique among the various proposals made over the years for congressional action in the soundness of its conception, in the scope of its treatment of the Federal aspects of this problem, and in the respect it shows for the proper division of roles between State and Federal Governments and between civil and criminal approaches to the problem.

Discussions of reasons why the problem of "child snatching" is a serious one, and why legislation like S. 105 is needed, can be found in an article I wrote in 1978 for the Family Law Quarterly [1] and in a number of other sources. My dealings with your staff, and with Senator Wallop and his staff, have made me aware that you are quite familiar with those various sources and have given them careful consideration in your work on S. 105, so I shall not attempt to summarize the history, causes, characteristics, extent and effects of the problem, or to review the relevant state legislation and decisions.

It seems worthwhile, however, for me to mention here a few of the prior congressional hearings and debates on this subject that I know you have drawn upon in your processing of S. 105. Some of them, as you know, were focused primarily on other bills, especially since the measure contained in S. 105 was first proposed in the Criminal Code bill (S. 1437) in the 95th Congress and is again being processed as part of the Criminal Code bill (S. 1722) in the current Congress. In addition, other congressional hearings related to child snatching have been held in still earlier Congresses. Those congressional materials lie, therefore, outside the scope of what might ordinarily be considered the legislative history of S. 105. For that reason, explicit reference in this hearing to your reliance on them in the course of your consideration of S. 105 may be of value to judges who someday will examine the reasoning on which your legislative judgment is based, determine the constitutional validity of this exercise of Congressional power, and render decisions interpreting and applying this legislation, and to lawyers and others who have occasion to examine the legislative history of S. 105.

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[1] "The 'Snatched' Child Is Halfway Home in Congress, 11 Fam. L. Q. 407 (1978) [hereinafter cited as Snatched Child].

Among those materials are:

1. The entire 1974 House hearings on amendments to the Federal kidnapping statute.[2]

2. The relevant portions of the hearings on S. 1437 (pages 399–409, 720–35 1002–21, 1314–15, 2561–63, 2729–30, 2807–10, 2816–20, 2848–50, and 2871–75).[3]

3. The relevant portions of the 1979 Senate hearings on S. 1722 (pages 9995, 10626–37, 10640, and 10669–74).[4]

4. The entire Senate hearing held on April 17, 1979, into the problem of "child snatching."[5]

5. The Senate floor debate on adoption, as an amendment to S. 1437, of the predecessor of S. 105.[6]

While my support for S. 105, in the form in which it was introduced, is strong and unequivocal, there are certain respects in which I think minor improvements could be made. In the final section of my statement I shall identify these and explain briefly how I think the bill could be improved.

The bulk of my statement will be devoted, however, to a much more important matter. I shall try to answer certain doubts or questions that have been raised about aspects of the bill, and to explain why certain changes in it that some others have proposed should not be made.

B. RELATIONSHIP BETWEEN S. 105 AND UCCJA

In recent years the number of States that have enacted the Uniform Child Custody Jurisdiction Act (UCCJA)[7] has risen to about 40. That act establishes criteria for determining whether an enacting State has jurisdiction to award custody and visitation of a particular child and requires enacting States to recognize an award made in substantial conformity to those jurisdictional criteria.

Nevertheless, enactment by Congress of S. 105 is vital, even assuming the trend among the States continues until nearly all of them have enacted the UCCJA. There are several reasons why there is no substitute for this Federal legislation.

First, the few States that fail to enact the UCCJA can continue to be havens for child-snatching parents, as some States without the UCCJA have been in the past. Parents who engage in such conduct often do so after receiving legal advice on the subject. As long as there are a few States available to knowledgeable attorneys and parents, where the State courts consider themselves free to assert jurisdiction on the mere basis of the child's relocation in the State and to "modify" the decree of another State, the problem of child snatching will remain a significant one.

Second, the States that have enacted the UCCJA have in some instances enacted variations in it that may undermine the uniformity and consistency among States needed on the basic questions of jurisdiction and the duty of interstate enforcement.[8] There are aspects of the UCCJA, such as detailed procedures for giving notice and keeping records, on which some variation among States can occur without giving encouragement to child snatching. Such details are not appropriate for dictation by Congress to the States, so they are omitted from S.105. Enactment of this Federal legislation is necessary, however, to ensure that the fundamental, central provisions establishing the basic criteria of jurisdiction and the duty of interstate enforcement are uniform among all the States.

Third, a tendency has appeared for the courts of various states, even ones with substantially identical UCCJA provisions on those basic matters, to construe and apply the fundamenal provisions in various and inconsistent ways,[9] ways that may tempt a parent to "forum shop" among States for one whose interpretations and applications of the act or substantive law and practice for custody cases favor his position. Only if those basic provisions on jurisdiction and interstate recognition are made matters of Federal, rather than State law, will there be an adequate mechanism to insure that they are interpreted and applied by the States with such uniformity that parents will perceive no legal advantage in using this kind of self-help.

It is necessary, of course, that Federal legislation in this area dovetail with those aspects of State law that are sound and significant. The child-snatching provisions of S. 105 are, in this respect as in others,[10] considerably improved over those found in S. 1437 in the 95th Congress. An important example of these improvements involves an exception in S. 1437 to the duty of interstate enforcement of custody and visitation orders, applicable whenever a State considered the order of another State contrary to its "strong public policy."[11] This exception had led representatives of the National Conference of Commissioners on Uniform State Laws to express grave reservations about the wisdom of enacting this federal legislation.[12] The exception has been deleted in S. 105.

The legal aspects of child-snatching are such that neither State nor Federal legislation could alone be fully effective. While one applauds the spreading acceptance of the UCCJA, one must recognize the need for Federal legislation on those basic aspects of this interstate problem is which States conflict with one another over jurisdiction and refuse to give full faith and credit to one another's decrees.[13]

I have been informed that a concern has been expressed that enactment of S. 105 would have an undesirable effect of preventing future improvement of the key UCCJA provisions. The example given to me related to the use some States have made of the "significant connection" basis of UCCJA jurisdiction,[14] use which has been so extensive as to lead Professor Brigitte Bodenheimer to describe the provision as a "loophole" and to recommend that the inclusion of an identical loophole in S. 105 be avoided by an amendment to the bill.[15] I share Professor Bodenheimer's concern over the extent of application of that basis of jurisdiction, as well as her apparent conclusion that amendment of S. 105 is preferable to rejection of the bill as a reaction to that experience under the UCCJA.[16]

As important as the treatment of that particular example, however, is the response to any more general concern that enactment of S. 105 would somehow impede the process of learning from experience and refining the law's treatment of this subject on the basis of that experience. What should be understood is that enactment of S. 105 would not foreclose the process of improving the law by statutory amendment. It would only mean that any future needs for further refinement of the statutes will have to be dealt with by Congress if they relate to the basic relationships between States treated in S. 105, and by State legislatures when they relate to other aspects of the law.

Prevention of child snatching requires that the standards for determining whether the jurisdictional basis for a custody and visitation order was such as

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[2] "Amendments to the Federal Kidnapping Statute: Hearings on H.R. 4191 and H.R. 8722 Before the Subcomm. on Crime of the House Comm. on the Judiciary," 93d Congress, 2d session (1974).

[3] "Legislation to Revise and Recodify Federal Criminal Laws: Hearings Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary," 95th Congress, 1st and 2d sessions (1977–78) [hereinafter cited as 1977–78 Code Hearings].

[4] "Reform of the Federal Criminal Laws: Hearings Before the Comm. on the Judiciary," Part XIV, 96th Congress, 1st session (1979) [hereinafter cited as 1979 Code Hearings].

[5] "Parental Kidnapping, 1979: Hearing Before the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources," 96th Congress, 1st session (1979) [hereinafter cited as 1979 Child Snatching Hearing].

[6] 124 Cong. Rec. S498–503 (daily ed. Jan. 25, 1978).

[7] National Conference of Commissioners on Uniform State Laws, Uniform Child Custody Jurisdiction Act (1968) [hereinafter cited as UCCJA].

[8] See, e.g., Alaska Stat. § 25.30.020 (a); Md. Ann. Code art. 16, § 188(a); Mich. Comp. Laws Ann. § 600.656(a).

[9] *Compare Gaines* v. *Gaines*, 566 S.W. 2d 814 (Ky. 1978), with *Williams* v. *Zacher*, 35 Or. App. 129, 581 P. 2d 91 (1978). See generally 1979 Child Snatching Hearing at 37 (testimony of Lawrence Stotter, Esquire).

[10] See generally letter from Patricia M. Wald, Assistant Attorney General, U.S. Department of Justice, to Congressman Peter W. Rodino (Sept. 20, 1978) (suggesting and discussing possible improvements in relevant provisions of S. 1437), published in 1979 Code Hearings at 10628–37.

[11] S. 1437, 95th Cong., 2d sess. § 124A(a) (proposed 28 U.S.C. § 1738A(a)(2) (Jan. 30, 1978).

[12] See 1977–78 Code Hearings at 2817–20.

[13] See, e.g., 1977–78 Code Hearings at 2849–50 (statement of Albert J. Solnit, M.D., Yale Child Study Center, affirming the need for this federal legislation along with widespread adoption of UCCJA).

[14] UCCJA § 3(a)(2).

[15] 1979 Child Snatching Hearing at 52.

[16] I do recommend, however, that any such amendment be drafted, for the sake of clarity and consistency with the style of § 1738A(c)(2)(D) and other provisions of the bill, in approximately the following language rather than that proposed in 1979 Child Snatching Hearing at 52: Insert the italicized language after "(B)" on page 7, line 1, of S. 105, so that that line will read as follows:

"(B) *it appears that no other State would have jurisdiction under subparagraph (A), and* it is in the best interest of the child that

to command interstate recognition have the clarity and consistency throughout all the States that can be achieved only by a Federal statute.

By enacting S. 105 now, the Congress will provide the firm basis for such consistency and clarity. If amendment of the Federal law appears necessary at a later time, the making of such an amendment again will have a uniform effect throughout the United States.

By treating the fundamental criteria of jurisdiction and full faith and credit at the national level, and likewise making any future changes in them at that level, we avoid one of the root causes of child snatching: the variations in interstate recognition of decrees that tempt parents to use self-help, forum shopping, and relitigation of custody. Failure to enact Federal legislation would leave us in the situation where some States by enactment, interpretation, or amendment of jurisdictional and enforcement criteria invite such conduct and thereby thwart the efforts of other States that interpret and apply their statutes so as to discourage child snatching.

The Congress should enact S. 105 now, and if amendments to jurisdictional provisions later appear necessary the Congress is as capable as any state legislature of giving them due consideration.

C. LIMITING THE FEDERAL LEGISLATION TO ITS PROPER SPHERE

Just as it is vital that Federal legislation be enacted, it is also important that it be so conceived and drafted as to operate only in the sphere where application of Federal law is appropriate, and not to intrude into areas of exclusive State responsibility. Examples of the latter areas are the substantive principles and rules applied in deciding which of two parents should have custody of a particular child, and the procedural and administrative rules by which specific time limits are fixed, forms of pleading are governed, records are kept, and so forth.

This point seems obvious, but it is noteworthy because of a natural but unfortunate tendency, in processing a Federal bill that resolves certain questions of the relations between States that arise in a particular kind of litigation, to incorporate in the Federal bill resolutions of other questions that involve relations not between States but between individuals. The provisions of S. 105, as they appear in the bill as introduced, display a clear recognition of the difference between questions of conflicts of jurisdiction and full faith and credit on the one hand—questions that are suitable for Federal legislation—and, on the other hand, questions of substantive family law and details of procedure and practice. The bill shows the proper respect for the exclusive role of the States to make law in the latter areas.

One should be alert, however, to recognize and reject any proposed revisions of these provisions that would create Federal law governing the choice between parents for custody of a child or the detailed procedures to be followed in family litigation. Whether or not the particular proposed rules of substantive family law, for example, are sound rules, one should insist that they be proposed to the various States, not imposed on the States by Federal law.

An example of a proposed revision that violates this principle is the suggestion, made[17] and later withdrawn[18] by Professor Brigitte M. Bodenheimer, that the Federal legislation permit a State to refuse to enforce another State's custody modification, though it was made consistently with the jurisdictional requirements, when it finds that "the primary basis for [the modification] was the imposition of a disciplinary measure upon a contestant."[19]

Creation of such an exception to the requirement of interstate enforcement would be a Federal encroachment on the right of each State to determine what specific factors should be given what weight in awarding or changing custody in cases over which it has jurisdiction.

The occasion for a custody modification that some would characterize as a "disciplinary measure" usually is (1) that the custodial parent was disobeying an order that he allow visitation by the other parent, (2) that he was relocating to a place so far distant from the other parent as to prevent or impede visitation, or (3) that he engaged in sexual or other conduct of which the court disapproved in a custodial parent.

It is true, as Professor Bodenheimer has stated,[20] that such conduct sometimes

[17] 1979 Child Snatching Hearing at 48, 53; 1977–78 Code Hearings at 2562.
[18] 1979 Child Snatching Hearing at 61.
[19] 1977–78 Code Hearings at 2563.
[20] Id. at 2562.

is not considered justification for a custody modification.[21] She interprets certain State court decisions as supporting her view that the UCCJA permits a State in effect to overrule such a modification duly made by another State.[22]

In some States, however, it is considered detrimental to a child for his custodial parent to take steps that interfere with contact between the child and the other parent or to engage in certain immoral or illegal conduct, and events such as those are weighed with all the other circumstances when an award or change of custody is requested.[23] It is not the function of Federal law to resolve this question of substantive family law.

Each State should remain able, in cases over which it has jurisdiction under the criteria of the UCCJA and S. 105, to decide such questions for itself. If unwise principles or rules of family law are adopted and applied in some States, the proper remedy is appeal to the higher courts of that State or petition to its legislature for a change in its law.

The remedy should not be an "appeal" to a trial court of a different State to overrule its sister State's decision, accomplished when the parent who is disappointed by the modification seeks its relitigation in a State that could not otherwise, under the UCCJA or these Federal provisions, exercise jurisdiction so as to command interstate recognition of its decree.

What the State that made the original custody decision, and that still has jurisdiction, sees as a modification in the best interests of the child under all the circumstances, another State may characterize as a "punitive" decree. To permit States so to disregard one another's decisions in such custody cases is to create a Federal rule of substantive family law and to invite parents to engage in, and States to reward, child snatching.

The provisions of S. 105 therefore are as I understand them not intended, as some authority indicates the UCCJA may have been intended,[24] to be so interpreted as to except from entitlement to interstate enforcement a custody or visitation modification deemed by another State to have been made primarily to punish a parent.

A persuasive discussion of this issue, and of a number of other important aspects of the child-snatching provisions, appears in a letter written on September 20, 1978, by then-Assistant Attorney General Patricia M. Wald to Congressman Peter W. Rodino. The letter and the attachments and footnotes that accompanied it are extremely useful in understanding the intent of the provisions of S. 105, so I have taken the liberty of including a copy of them as a part of this statement. I urge you to include them in the record of these hearings.

The principle that this bill should respect the role of each State to define and apply its substantive law of custody would likewise be violated by a second possible revision of S. 105 I understand has been proposed. That idea would be to let a State refuse to enforce another State's order when the party who obtained the order lacked "clean hands."

The hypothetical case someone suggested to me as illustrating a supposed need for such an amendment was approximately as follows. Before any custody proceedings are filed a father takes his child from State A, which under the facts of the case is the one and only State satisfying the jurisdictional criteria of S. 105, to State B where none of those criteria are met. The mother files no suit in State A, but the father does file suit in B and convinces the jurisdictional criteria of § 1738A(c) are satisfied and that notice under § 1738A(e) has been given, even though in reality there is compliance with neither provision. The father accomplishes this either because the judge is unfamiliar with this law or because the father gives false evidence that appears credible. The father obtains a custody order and claims that under § 1738A other States are required to recognize it.

The argument made on the basis of that hypothetical case was that, to avoid allowing a parent to obtain such an order and requiring other States to give recognition to it, Congress must amend S. 105 (1) to permit State B to decline to exercise jurisdiction invoked by one lacking "clean hands," or (2) to permit

[21] See, e.g., *In re Marriage of Gutermuth*, 246 N.W. 2d 272 (Iowa 1976).
[22] Bodenheimer, "Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications," 65 Calif. L. Rev. 978, 1006–07 (1977) [hereinafter cited as Bodenheimer, Progress].
[23] See, e.g., "Matter of Marriage of Settle," 25 Or. App. 579, 550 P. 2d 445, rev'd on other grounds, 276 Or. 759, 556 P. 2d 962 (1976).
[24] See, e.g., 1977–78 Code Hearings at 2562–63; Bodenheimer, Progress at 1006.

States other than B to refuse to enforce an order obtained by one lacking "clean hands," or (3) both.

The argument is unsound, and any such amendment should be rejected.

The first suggested amendment is wholly unnecessary, because neither present Federal law nor S. 105 forbids State B to decline to exercise jurisdiction, so no exception granting such permission is needed.

The second suggested amendment also is unnecessary, for different reasons. Since the mother in fact lacked the "reasonable notice and opportunity to be heard" required not only by § 1738A(e) but also by the 14th amendment, she is bound neither by the factual finding that she received such notice nor by any other part of the decision.[25]

Suppose, then, that the hypothetical case is altered so that the father gave her due notice, but she declined to appear in person or by counsel and thereby passed up her opportunity to establish the falsehood of the father's evidence that § 1738A(c) was satisfied as well as her opportunity to obtain in B's appellate courts a reversal of the trial court's errors of law. In that event she is bound by the order,[26] and other States are required to enforce it. The result follows, however, not from any deficiency in the statute but from application of principles of res judicata to a case in which a party failed to contest the material propositions of fact and law. No amount of amendment of any statute can prevent a party from losing the rights created by the statute through his failure to exercise them. In this instance, an amendment allowing States other than B to ignore B's order if the father lacked "clean hands" would be as vulnerable to parties' failures of diligence as are the other provisions of this legislation or of any other law. It would add nothing of value to the statute, and would be mischievous for reasons discussed below.

A further change in the hypothetical case is necessary to explain why the addition to S. 105 of a "clean hands" exception to the duty to give "full faith and credit" would exceed the bounds of the proper Federal role. Suppose that "State A meets the jurisdictional criteria for a "home State," set forth in § 1738(c)(2)(A), and State B meets those of physical presence of the child coupled with necessity for his protection in an emergency resulting from this mistreatment, stated in § 1738A(c)(2)(C)(ii). In other words, both States have subject matter jurisdiction consistently with the criteria in § 1738(c).

To understand one way that such a case might arise, assume that a boyfriend of the mother subjected the child to such mistreatment that it because necessary in the emergency for a court to afford the protection of a custody and visitation order.

Assume further, however, that the father believed that State A's practice of awarding custody of small children to mothers would lead its courts to give the mother custody subject to a condition that she keeps the boyfriend away from the child, and that the father also believed that State B would give him custody. Suppose that he therefore took the child to State B in violation of an oral understanding under which the mother had had custody, and concealed his whereabouts until he could file a custody case.

Assume further that in the father's suit, which constituted the first proceedings in any State for custody of the child, State B determined that the father lacked "clean hands" because of his self-help, violation of the oral agreement, forum shopping, and concealment of his child, but exercised jurisdiction anyway and considered the father's use of those methods outweighed by other considerations of substantive law and gave him custody.

The proposed amendment would provide in effect that in such a case other States would be under no Federal statutory duty to recognize the custody decree. This variation on the hypothetical case is different from the ones discussed above. In them, the undesirable results were produced by a combination of legal and factual errors in a trial court of State B, coupled with the failure of a party to exercise the rights available to her to prevent or correct such errors and to file a timely custody suit in a State A court. In the new example two different factors are present.

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[25] See generally, UCCJA §§ 4 and 5 and the accompanying Commissioners' Notes found in 9 Uniform Laws Ann., Master ed. (1979).

[26] This observation assumes that she had the "minimum contacts" with the forum state needed for due process, a matter discussed in section E below.

First, as was noted above, the case involves concurrent jurisdiction on the parts of two States consistently with § 1738A(c). Second, the court that made the custody order did so by exercising jurisdiction despite a finding of "unclean hands" and applying standards of substantive law that might be considered sound by some States and unsound by others.

Two options are available to avoid the hypothetical result, therefore, without the need for amendment of S. 105.

The first is for the State B court to decline to exercise its jurisdiction when it is invoked by the father, either on the ground that he lacks clean hands or on the ground that the particular emergency that exists, while it meets the jurisdictional criteria of § 1738A(c)(2)(C), is one with which State A could deal as well as or better than can State B, and that therefore State B is an inconvenient forum and State A a more convenient one. This option is available on the basis of either ground under present law at least in the vast majority of States,[27] and would in no way be impaired by enactment of S. 105 without the suggested amendment.

The second option is for the B court to experience jurisdiction over the custody of the child, but to decide as an application of the substantive law of custody that in view of the father's conduct and all the other circumstances of the case the mother should have custody. Again, the option already is available to each State and would not be limited by enactment of S. 105 in its present terms.

Depending on how it was drafted, a "clean hands" amendment to S. 105 would tell States they must exercise one or the other of those options against petitioners or see their custody orders subject to reversal by any other State. If the amendment provided in effect that the duty of interstate enforcement did not apply to any order made in favor of one who failed to meet the Federal standard of "clean hands," [28] it would be a Federal requirement that the second option be exercised; that is, it would be a statute creating a Federal criterion of substantive custody law and declaring that a custody order inconsistent with that criterion need not receive full faith and credit but orders consistent with it must.

If, on the other hand, the amendment in effect exempted from the duty of interstate enforcement every order made in a case brought by a party lacking "clean hands," regardless of whether the order was favorable or unfavorable to that party,[29] it would be a Federal requirement that the first option be exercised; that is, it would have the same effect as adding to each of the jurisdictional criteria in § 1738A(c) the additional requirement that the petitioner have "clean hands."

An amendment in the former terms would be a direct intrusion into the States' function of deciding what substantive standards of law should determine which of two parents gets custody of a child. While an amendment in the latter terms is focused directly on standards for jurisdiction to decide a case rather than on standards for determination of its outcome, is also an invasion of the States' role. That is so because of the nature of the concept of "clean hands" as it applies to child snatching and interstate custody litigation, which is illustrated by the following UCCJA provision and commissioners' comment on the subject. Emphasis is added below to the language which most obviously would involve federal law in the determination of which parent's conduct better served the interests of a child and which parent had, prior to the questioned conduct, the better claim to custody.

Section 8

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

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[27] See UCCJA §§ 7 and 8.

[28] Cf. UCCJA § 8(b).

[29] Cf. UCCJA § 8(a).

COMMENT

* * * Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree * * *.

Inclusion in this Federal statute of a "clean hands" criterion, which would so thoroughly make the rights and wrongs of a custody dispute matters of Federal law, would go far beyond the proper Federal role of determining when a State has such a relationship to a custody dispute that its resolution of that dispute binds other States. Even the jurisdictional criteria in § 1738A(c)(2)(C), which under the UCCJA are "reserved for extraordinary circumstances," and those in § 1738A(c)(2)(D), which under the UCCJA are "to be resorted to only if no other State could, or would, assume jurisdiction under the other criteria of this section," [30] do not federalize the evaluations of the conduct of two parents toward their child as would a "clean hands" provision.

Furthermore, their limited role, as exceptional criteria to be applied only rarely, minimizes the risk that parents will find a substantial continuing inducement to child snatching in the hope that the second State to see a particular custody case will modify the first State's order on the ground that the first State was wrong in deciding that paragraph (C) or (D) applied. A "clean hands" criterion, on the other hand, could under various circumstances be used by a parent to attack an unfavorable order made under any of paragraphs (A) through (E), and would offer dissatisfied parents substantial inducements indeed.

For those reasons, adoption of a "clean hands" exception to the duty of interstate enforcement would badly unbalance the sound allocation of Federal and State roles now found in S. 105, and would seriously threaten the effectiveness of the bill in preventing child snatching. A sound proposal for Federal legislation should not be undermined on the basis of a fear that States will fail to use wisely remedies that already are available to them, and that will remain available after enactment of S. 105.

D. CONGRESSIONAL POWER TO ENACT THIS BILL

The provisions of S. 105 have several basic features that distinguish them sharply from other proposals for Federal legislation concerning child snatching.[31] Central among those features is the way this measure conditions the congressionally created duty of a State to enforce another State's custody and visitation order on the conformity of the latter State's proceedings in the case to specified jurisdictional criteria conforming closely to those of the UCCJA, and then conditions the exercise of Federal power by the Parent Locator Service, the FBI, or the Justice Department on the entitlement of the order to enforcement by all the States. These vital linkages are more fully described, and their importance is more fully stated, in my Family Law Quarterly article.[32] They are discussed there primarily in terms of the way those linkages facilitate sound and effective results and avoid anomalous and counterproductive ones. It should be noted here, though, that those linkages bear on the constitutional bases for congressional power to enact S. 105.

One of those bases is the full faith and credit clause, which expressly confers on Congress the power to "prescribe * * * the Effect" that "judicial Proceedings" in any State shall have in other States.[33] What the provisions of proposed section 1738A of title 28, United States Code, do in substance, in the language of the full faith and credit clause, is to prescribe that judicial proceedings in one State concerning the custody or visitation of a child shall have specified effects in another State. They limit that prescription by making it inapplicable if the proceedings do not satisfy specified jurisdictional criteria. Thus, the jurisdictional criteria are not imposed on the States as preconditions of their original assertions of jurisdiction in all cases. They are treated only as tests of whether a

[30] Commissioners' Notes to UCCJA § 3(a)(3) and (4), 9 Uniform Laws Ann., Master ed. (1979).

[31] See, e.g., "Snatched" Child at 413–14 n. 23 (distinguishing this measure from S. 797 and H.R. 988, 95th Cong., 1st sess. (1977)).

[32] "Snatched" Child at 411–17 and nn. 23, 29.

[33] U.S. Const., art. IV, § 1.

State proceeding had such a jurisdictional basis that it must receive interstate recognition.[34] These provisions of S. 105 are, in my opinion, an appropriate exercise of this specific congressional power.[35]

Another constitutional basis for this legislation is the commerce clause, on which the existing Federal kidnapping law is grounded.[36] The commerce clause appears to be an adequate basis not only for proposed section 1203 of title 18, the misdemeanor created to permit use of the FBI in locating child-snatching parents and to deter such conduct, but also for proposed 28 U.S.C. 1738A, [37] particularly since section 1738A is limited to interstate cases in the manner just described and since the findings in S. 105 appear reasonable and adequately based on the various House and Senate hearings relevant to this measure.

There is no need, in my view, for the Congress to choose between those two bases of its authority to enact S. 105. On the contrary, I think you are wise to rest this legislation on both sources of congressional authority, and I urge you to continue to make that intention clear both in the language of the bill itself and in the legislative history.

E. CONSTITUTIONAL SUFFICIENCY OF PROVISIONS RELATING TO PERSONAL JURISDICTION

The opinion has been expressed, in the context of consideration of due process requirements, that the provision of this measure requiring the giving of "reasonable notice and opportunity to be heard" is adequate.[38] Under the due process

[34] This principle should be kept in mind when one reads that "* * * jurisdiction of a court * * * continues * * *" under certain circumstances in proposed § 1738A(d), and that a condition of application of proposed § 1738A(c)(2)(D) is that " * * * no other State would have jurisdiction under subparagraph (A), (B), (C), or (E) * * *." Although those expressions by their terms seem to refer to a federal statutory grant of jurisdiction to state courts, they of course do not mean that but are merely economical expressions referring to the conditions under which the federal statutory duty to enforce and not to modify a custody determination is applicable or inapplicable. The same is true of § 1738A(e).

On the other hand, the imposition of a duty of enforcement and the prohibitions of certain state exercises of jurisdiction in § 1738A(a) and (g) mean just what they say—they "prescribe" those "Effects," to use the terminology of the full faith and credit clause.

Section 1738A(f) is more complex. The permission to modify granted by the opening clause means what it says: it creates an exception to the duty and prohibition established by subsection (a). Likewise, the "jurisdiction" referred to in § 1738A(f)(1) as a condition for application of the exception is jurisdiction under the law of the state that would make the modification. The term "jurisdiction" in § 1738A(f)(2), on the other hand, is shorthand for satisfaction of both criteria of subsection (c), the jurisdiction of the court that made the prior order under its own law under subsection (c)(1), as well as the meeting of one of the conditions described in (c)(2).

While these provisions are rather complex, the scheme of them is sound. It can be summarized as follows. In parentheses are references to the subsections of § 1738A that provide for each element.

Once a custody order is made by a court (one in state A, for ease of reference) that has jurisdiction under its own state law (subsection (c) (1)) and that meets one of the federal criteria (subsection (c)(2)), that order must be enforced and cannot be modified by any other state (subsection (a)). Under the definition in subsection (b)(5) any subsequent order other than one that merely enforces it according to its terms is a modification.

That duty of enforcement and non-modification applies likewise to any modification later made by state A provided that there has been no interruption, from the time of the initial order through the time of the modification, in the court's jurisdiction under state A's law or in the maintenance of the residence in state A of the child or of at least one contestant (subsection (d)).

Other states' duty of enforcement and non-modification ends when any one of three events occurs: (1) the state A court declines to exercise jurisdiction to modify its order (subsection (f)(2)); (2) the state A court loses jurisdiction under the law of state A (subsection (f)(2)); or (3) the state A court ceases to satisfy at least one of the jurisdictional criteria of subsection (c)(2)(A) through (E) (subsections (a), (c)(2) and (f)(2)). The third event would occur when state A ceased to be the residence of the child or any contestant and none of the criteria in subsection (c)(2)(A) through (D) were then applicable to state A.

Once the other states' duty of enforcement and non-modification terminates in that fashion, and state B therefore is free so far as the federal statute is concerned to make an order, the question whether the new order will be entitled under the federal act to interstate recognition remains, and is to be determined under the criteria of § 1738A just as was the same question as to the initial order of state A.

It should be noted that a dismissal on the merits of a petition for modification is not a declination to exercise jurisdiction to modify within the meaning of § 1738A(f)(2). The same is true of UCCJA § 14 (a), as the Commissioners' Comment to that UCCJA section makes clear. 9 Uniform Laws Ann., Master ed. (1979).

[35] See generally 28 U.S.C. § 1738 (1970) (implementing full faith and credit clause); II M. Farrand, "The Records of the Federal Convention of 1787," 488–89 (1966).

[36] See 18 U.S.C.A. § 1201 (1977) (interstate kidnapping).

[37] See letter from Patricia M. Wald, Assistant Attorney General, to Congressman Peter W. Rodino (Sept. 20, 1978), published in 1979 Code Hearings at 10628–37.

[38] 1979 Child Snatching Hearing at 63 (view of Professor Bodenheimer).

clause it may be necessary also that the contracts between a parent and the forum State be such that it is consistent with due process for the State to bind him by its exercise of jurisdiction over custoday of his child.[39] The same issue in this respect is presented by the UCCJA as by the provisions of S. 105. It is not yet possible, in my opinion, to be certain how the rationale of recent Supreme Court decisions on personal jurisdiction will be applied to determinations of custody in cases where the only contacts of a party with the State exercising jurisdiction are those described in the subject matter jurisdictional provisions of the UCCJA and this bill.

It nevertheless is my hope that, when some 40 State legislatures and the Congress have made considered decisions that it is necessary and appropriate that jurisdiction over child custody and visitation be capable of exercise by a State when the contacts described in the jurisdictional provisions of the UCCJA and this Federal legislation, have existed between the State and members of a family, the Supreme Court will hold such contacts sufficient under the due process clause of personal jurisdiction.[40] In any event, the possibility that the Supreme Court will require more is not a reason not to enact these Federal provisions, any more than it is a reason for States not to enact the UCCJA. Any holding that there were insufficient contacts for personal jurisdiction would be based on the circumstances of the particular case[41] and would not invalidate the statute.

As I understand it § 1738A is intended to be construed so that a lack of minimum contacts between a parent and one State (in this instance, I shall refer to it for convenience as State X) is in itself sufficient to justify the conclusion that State X lacks jurisdiction within the meaning of § 1738A(c)(2)(D)(i). That may be important if the Supreme Court decides that one or more of the criteria of subsection (c)(2)(A) through (C) and (E) are insufficient in themselves to constitute the required minimum contacts.

Unless § 1738A were construced as I suggest, the fact that in a particular case State X met for example, the criteria of paragraph (C) but lacked minimum contacts with the respondent might be held to prevent the petitioner from using paragraph (D) to bring a custody suit in State Y or State Z, with which the respondent did have contacts satisfactory to the Supreme Court.

The intended construction of § 1738A produces the commendable result that paragraph (D) can be utilized whenever no state having adequate contacts with the respondent can satisfy any of paragraphs (A) through (C) and (E).

The petitioning parent in such a case will never be wholly deprived of a forum having power to command interstate recognition of its order, since under paragraph (D) he presumably could invoke the jurisdiction of any State having sufficient contacts with the respondent. It must be observed that the language of § 1738A, particularly the phrase "under subparagraph (A), (B), (C), or (E)" in subsection (c)(2)(D)(i), makes this construction of the statute less than obvious.

It is obvious, though, that the effectiveness of the bill requires this construction of it, and the legislative history reflects generally the need and expectation that the measure will be so construed that every case will be legally capable of adjudication consistently with § 1738A in one State or another.[42] I hope that under those circumstances the intended construction of the bill will be adopted by the courts.

F. COVERAGE OF VISITATION ORDERS

The child-snatching provisions of proposed 28 U.S.C. 1738A, like those of the UCCJA, are applicable to court orders for visitation as well as those for custody. This coverage of visitation was a part of the Federal proposal when it was endorsed by the ABA,[43] the Justice Department[44] and others.[45] Suggestions that the coverage of visitation be deleted[46] should be rejected, for reasons discussed in my Family Law Quarterly article.[47] Some of those reasons can be stated as follows.

[39] Cf. *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978); *Schaffer* v. *Heitner*, 433 U.S. 186 (1977).

[40] See generally 1977–78 Code Hearings at 1016 n. 6 (reference by Wallace J. Mlyniec and Ramona Powell to argument that "being parent of a child in a state where you have never been is a sufficient contact"); 9 Uniform Laws Ann. Master ed. 150–52 (1979) (Commissioners' Notes to UCCJA).

[41] See, e.g., *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978).

[42] See generally 1979 Child Snatching Hearing at 190 (Commissioners' Comment on UCCJA § 3(a)(4)), 218–19 (Bodenheimer, Progress at 989–90), 270 ("Snatched" Child at 412).

Judges in custody cases exercise discretion to divide parental rights and duties between fathers and mothers in a wide variety of ways. Their dispositions range from an award of custody to one parent and only minimal, token visitation to the other, at one extreme, to an award of joint or split custody at another extreme. In between those extremes, others are found in which, though one parent is denominated the one having "custody," the other parent is authorized and expected by the court to have so much contact with the child and to exercise such a role in the nurturing, discipline, and decisionmaking affecting him that the distinction between the one parent's "custody" and the other's "visitation" is obviously one of degree, not of kind. Such orders are made not as favors to parents but because in many cases, and increasingly so, the courts find such orders to be in the best interests of children.

It would not serve the interests of children, therefore, to treat some of the rights to participate in their upbringing and company as entitled to enforcement by States other than the one exercising jurisdiction, yet to treat others of the same rights as subject to disregard and relitigation by courts of other States. Furthermore, since respective custody and visitation rights of the parents in a particular case typically are contained in a single order, it would be unseemly and anomalous to forbid a State to "overrule" an award of custody by another State yet to allow it to overrule the visitation award that interlocks with the grant of custody. An example of the anomalous results to which such a rule could lead is that a court, disagreeing with an award by another State of custody to a mother and very limited visitation to the father, and forbidden by this Federal legislation to change the custody terms but allowed to change the visitation terms, could so greatly expand the visitation rights as seriously to impair the custody award. Two court orders, made by two States, would contain inconsistent provisions for where a particular child should be on a particular day, week, or month, and the problems that led to the proposing of the UCCJA and the Federal legislation would have renewed vigor.

Another factor, relating to the policies and practicalities that underly this legislation, militates against deletion of visitation from its coverage. The promise of the legislation is to reduce the temptation to use self-help, forum shopping, and repetitive litigation by eliminating the prospect that such methods will produce results more favorable to the offending parent than would his acceptance of the decision of the State which properly should exercise jurisdiction. Many child-snatching parents, however, are motivated less by hopes of custody than by frustration of their desires for visitation,[48] and are using self-help to shop for a forum that will award more liberal visitation than has been ordered or may be ordered by the state that otherwise would have jurisdiction. If coverage of visitation were deleted from S. 105, a major incentive to child snatching would remain and the legislation would be less effective than is required by the interests of children in protection from child snatching, and by the interest of the public in avoiding conflicts between States over rights affecting children.

For the same reasons, it would be a grave mistake to amend S. 105, as has been proposed,[49] by adding a provision that "visitation provisions" of a State A order "shall be enforced" in State B, but that State B "may adjust visiting schedules to fit changed geographic circumstances." The former requirement is redundant, since it already appears in proposed 28 U.S.C. § 1738A (a) and (b)(3). The latter provision would be a loophole that would allow State B largely to thwart the intent of State A's order and tempt parents to shop for States that will "adjust" orders in ways that are to their liking. Creating this inducement to child snatching would be no cure for the problem at which the suggestion is said to be aimed: The tendency of some States to make custody modifications that other States

[43] ABA Summary of Action of the House of Delegates 25 (Aug. 8–9, 1978).

[44] See letter from Patricia M. Wald, Assistant Attorney General, to Congressman Peter W. Rodino (Sept. 20, 1978), published in 1979 Code Hearings at 10628–37.

[45] See, e.g., 1977–78 Code Hearings at 720–35 (Children's Rights, Inc.), and 1002–18 (Mlyniec and Powell).

[46] See 1977–78 Code Hearings at 405.

[47] "Snatched" Child at 419–420.

[48] See 5 Fam. L. Reporter 2888 (Sept. 11, 1979) (summary of remarks of Lawrence Stotter, Esquire, at ABA meeting).

[49] 1979 Child Snatching Hearing at 61 (statement of Professor Bodenheimer).

consider "punitive". The cures for that problem must be found in State law and practice, and are discussed above in section C of this statement. Instead, the proposed amendment would simply lead to anomalous results, inject uncertainty into the application of the statute, and undermine its effectiveness in preventing child snatching.

A somewhat different issue is raised by the suggestion that visitation rights be excepted from the scope of the criminal provisions. The best approach is to cover visitation equally with custody, as is now done in S. 105, for some of the reasons mentioned above in the general discussion of visitation. Just as the discretion of the FBI and U.S. attorneys must be relied upon in cases where custody rights are violated, they can be relied upon to result in still more selective treatment of visitation cases. In any event, the only specific language I have seen proposed on this point is wholly unworkable,[50] and it would be difficult or impossible, in view of the variety of custody and visitation orders States make, to draft language excluding visitation from § 1203 that would both reflect sound policy and provide the clarity needed in a criminal statute. I recommend that you not alter this feature of S. 105.

G. ROLE OF FEDERAL CRIMINAL LAW

The vital provisions of S. 105 are the civil ones. I have explained elsewhere how they can be expected greatly to reduce the incentives for child snatching, provide strong practical disincentives for such conduct, and facilitate greatly the use of State civil and, where appropriate, criminal remedies in the relatively few such cases that will continue to occur.[51] Enactment of the civil provisions of S. 105 without the criminal ones would be perfectly feasible, and could be expected to bring the problem of child snatching reasonably well under control. The converse is not true. Indeed, as I have discussed elsewhere,[52] enactment of a Federal criminal provision that was not linked to a provision like proposed 28 U.S.C. § 1738A in the way S. 105 links them would be not only ineffective but counterproductive.

There is, nevertheless, an appropriate role for the Federal criminal authorities in locating offending parents when all else fails, and there may even be occasional instances in which Federal prosecution will be justified under all circumstances. Each individual case is vital to the family involved, so the expectation that few cases will have to be referred to the FBI is not a compelling reason to omit authority for such referral. Instead, it is a reason why the objections of the Justice Department to the criminal provisions of S. 105 are entitled only to limited weight.

The most serious objections that were raised against the criminal provisions of this measure in the form in which it was passed by the Senate in early 1978 have been cured in the version you have before you. An explanation of those improvements is included in the Justice Department letter of September 20, 1978, to which I referred above.[53]

The bill now permits involvement of Federal criminal authorities in a case only after the appropriate State civil court has determined the rights of the parties, and even then only after ample opportunity for the application of State and civil investigative and remedial measures to eliminate the need for Federal criminal action in the case.

The opportunity for the exercise of discretion by the FBI and U.S. attorneys will exist in this kind of case as in all others, so warnings of undue diversion of resources or involvement in domestic matters appear unjustified. The only time, in fact, when I expect the volume of cases in which the FBI will have jurisdiction to be really substantial is shortly after enactment of the bill when, as I explain in the next section of this statement, attention will have to be given to a backlog of unresolved cases that the inadequacy of prior law has created.

Many of those cases should become capable of State resolution during the periods of delay built into section 1203(a) and (g)(3), as offending parents and their lawyers learn of enactment of the bill, so the initial burden on the FBI will be mitigated. The case not been made, in my opinion, for the proposition

[50] See 1979 Child Snatching Hearing at 62.
[51] "Snatched" Child at 411–15.
[52] Id. at 413–14 and n. 23.
[53] Letter from Patricia M. Wald, Assistant Attorney General, U.S. Department of Justice, to Congressman Peter W. Rodino (Sep. 20, 1978), published in 1979 Code Hearings at 10628–37.

that the Federal criminal authorities should have no part in the control of this problem.

H. APPLICATION OF CRIMINAL PROVISIONS TO RESTRAINT THAT BEGAN BEFORE ENACTMENT

I understand that doubt has been expressed that the criminal provisions of this bill will be applicable to restraint of a child that began before its enactment and continued thereafter. Let me try to lay that doubt to rest. Any case in which the conduct of a parent after the effective date of the act fits within the terms of proposed 18 U.S.C. section 1203 will be subject to investigation and prosecution in accordance with its terms. A restraint, for example, that began before 18 U.S.C. section 1203 took effect but was intentionally continued thereafter by "confinement" that was not "trivial," that violated another's custody or visitation right arising from a custody order that was obtained before enactment of 28 U.S.C. section 1738A but that was obtained consistently with its provisions and so is "entitled to enforcement" under it, and that came within the other terms of section 1203 would violate the criminal prohibition and would, under the circumstances specified in section 1203, be subject to Federal criminal investigation and prosecution.

I. CRITICISMS OF MISCELLANEOUS PROPOSALS FOR AMENDMENTS

I recommend that you reject also certain other amendments that have been proposed.

(1) The worst forum in which to arrange reimbursement of parents' expenses in custody cases is the Federal criminal forum. It will be available in a small minority of cases, and even in them it suffers from procedural handicaps including the fact that only one parent is a party to the proceeding. You should reject the idea, which has been suggested,[54] of trying to wrap up any civil recovery in a federal criminal proceeding.

(2) The suggestion that has been made,[55] to the effect that amendment of the Parent Locator Service provisions of S. 105 is necessary in order that the Service can locate children who are taken and concealed before a custody order is made, seems based on a mistaken interpretation of S. 105.

The same is true of the suggestion that the limitation of proposed 18 U.S.C. § 1203 to cases in which a State court has made a custody order consistent with 28 U.S.C. § 1738A will leave 70 percent of the victims of child snatching without a federal criminal remedy.[56]

As I have explained elsewhere,[57] the provisions of proposed 28 U.S.C. § 1738A apply, and therefore the PLS provisions and the criminal provisions also can be applied, to an order obtained by the victim-parent after the offending parent has taken a child, even though there was no custody order when the taking occurred. S. 105 is like the UCCJA in contemplating a State's making the initial custody order in a case after the child has been taken from the State.[58]

To allow parents to invoke the aid of the PLS before obtaining such an order would deprive the Service of any screening of complaints by the civil courts of the States. I understand that the Federal PLS has had to rely on some State screening of child support claims in order to prevent abuse of the system by various other kinds of creditors. It seems at least a sound precaution to expect a parent to obtain at a minimum a temporary custody order before obtaining the aid of the PLS. Similar arguments apply, with still greater force, to underscore the wisdom of limiting Federal criminal provisions to violations of rights based on state custody orders.

(3) It has been suggested that S. 105 be amended to provide that full faith and credit not be required for ex parte, temporary orders made without notice or an opportunity to be heard.[59] No such amendment should be made, as the bill already so provides.[60] Likewise, the suggested[61] cross-reference in subsec-

[54] See 1979 Child Snatching Hearing at 20.
[55] Id. at 33.
[56] Id. at 58.
[57] "Snatched" Child at 411.
[58] See Bodenheimer, Progress at 989–90.
[59] 1979 Child Snatching Hearing at 53 (statement of Professor Bodenheimer).
[60] See S. 105, proposed 28 U.S.C. § 1738A(a), (e). The interpretation of those provisions is discussed above, in the long footnote in section D of this statement.
[61] 1979 Child Snatching Hearing at 63.

tion (b)(3) of proposed 28 U.S.C. § 1738A to subsection (e) is unnecessary and would only clutter the draftsmanship of the bill.

J. SUGGESTIONS FOR MINOR IMPROVEMENTS

I recommend that you delete section 3(c) of the bill, which encourages the States to give priority to custody proceedings and to award compensation for expenses for certain "wrongful" conduct. Those provisions are, in my opinion, inappropriate and of no value in a Federal enactment. There are a number of respects in which reliance must be placed on state law and practice, not only in the areas referred to in this subsection of the bill but even on subjects as vital in handling interstate custody problems as rapid and full communication among courts of different States. Due respect for the powers and responsibilities of the States suggests, in my view, that neither laws nor exhortations by the Congress should be utilized as to the matters mentioned in section 3(c).

In proposed 18 U.S.C. § 1203(g), I find it anomalous that statutory language would command alleged victims to take affirmative actions. It is fine to make the failure of a victim to take certain steps a bar or defense to prosecution of an accused, or a bar to FBI investigation, but it is another thing to impose a mandatory reporting requirement, still another to do so without providing any sanctions for failure to comply with the requirement, and still another to place such provisions in the Federal criminal laws codified in title 18 of the U.S. Code. I recommend deletion of proposed § 1203(g)(1). For similar reasons, (g)(2) should be deleted. Acceptance of those recommendations would require minor technical changes in (g)(3), which I consider in substance a sound provision.

CONCLUSION

I am grateful for your interest in receiving these comments, Mr. Chairman, and I applaud your work on this important bill. If I can be of any further service to you or your staff, I hope you will feel free to call upon me at any time.

Senator MATHIAS. I would instruct the staff also to admit other appropriate statements for the record and within the 2-week period.

I am very grateful to all of you. I am sorry I must summarily terminate this session. This session of the committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 5:34 p.m., the hearing adjourned, subject to the call of the Chair.]

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