ISSUE PRESENTED FOR REVIEW

Did the trial court abuse its discretion when, after determining as a matter of fact that there was no reasonable possibility that either Mr. Ardestani or the Iranian military would attempt to keep his children in Iran, it allowed Mr. Ardestani to take his children there for a limited period, his return secured by a pledge of his pension, retirement and investment plan?

STANDARD OF REVIEW

As the statement of the issue implies, the standard of review of a trial court's decision on visitation issues is abuse of discretion. See, e.g., F. R. v. T. B., 225 Wis. 2d 628, 644-45, 593 N.W.2d 840 (Ct. App. 1999).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Although Respondent believes that this case ultimately presents a rather routine issue of abuse of discretion, the terms and conditions under which one divorced parent may take children on a temporary trip to a foreign country has not been addressed in Wisconsin, and is a matter of sufficient public importance to justify both oral argument and publication.

STATEMENT OF THE CASE

The statements of the case contained in the briefs of Ms. Long and the GAL are accurate, but incomplete. This statement attempts to correct some

salient omissions -- facts which cannot be ignored when evaluating the propriety of the trial court's exercise of discretion.

Background

Petitioner-Appellant Lori Long and Respondent Mohammad Ardestani were married on May 29, 1980 in Galena, Illinois. Respondent's Appendix ("R. App.") 002, ¶ 4. They have lived in Prairie du Chien since 1981. R. App. 122.

During their marriage, the couple had four children: two daughters, Shiva and Maria; and two sons, Farshaun and Kamran. R. App. 002, ¶ 5.

On July 22, 1999, a Judgment of Divorce was entered, dissolving the marriage effective June 10, 1999. R. App. 004, ¶ 12. The Court found, among other things, that both parties were "fit and proper persons to be given the care and legal custody of the minor children" and that "the best interest of the children is served by awarding joint legal custody to both parties." R. App. 003, ¶ 7; 005, ¶ 15A. Primary physical placement of the minor children was awarded to Ms. Long, with substantial periods of physical placement allocated to Mr. Ardestani. R. App. 005, ¶ 15A; R. App. 010-013, §§ I.A-I. The Judgment of Divorce incorporated a Marital

Settlement Agreement, R. App. 010-020, entered into by the parties with advice of counsel. R. App. 019, § XII.

Mr. Ardestani was born in Iran. Although he moved to the United States in 1978, he is a United States citizen, and has a brother, sister-in-law, and niece who live in Prairie du Chien. His mother and father still live in Iran, along with a number of other relatives. R. App. 027, 121-23, 130-31. In recognition of Mr. Ardestani's background, the Marital Settlement Agreement provided:

> H. In the event the respondent desires to take the minor children outside of the United States, he shall give sixty (60) days' notice of his intention to petitioner who then has thirty (30) days to move the Crawford County Circuit Court for an order prohibiting the trip or requiring the respondent to post a bond. In the event respondent desires to take the children to Iran for a summer vacation visit, respondent may have physical placement of the children up to six (6) weeks regardless of the respondent's placement entitlement under Paragraph I. B. 4. above, provided, however, respondent shall not be entitled to any additional physical placement during the summer during which the Iranian visit occurs. If the Iranian vacation uses less physical placement time than the respondent is ordinarily entitled to under Paragraph I. B. 4., respondent shall receive the additional placements to which he is entitled.

R. App. 013, ¶ I.H.

In November of 1999, Mr. Ardestani notified Ms. Long of his desire to take at least some of his children to Iran in the summer of 2000. Ms.Long objected. R. 36, 37.

The Initial Hearing

The matter was initially brought on for hearing before the Circuit Court for Crawford County on May 5, 2000. Ms. Long presented three witnesses: two proffered as experts on Middle Eastern Law and Ms. Long herself. The Guardian ad Litem (or "GAL") presented the testimony of a social worker familiar with the two boys. Mr. Ardestani testified on his own behalf.

The Experts. Both of Ms. Long's expert witnesses, Dr. Gamal Moursi Badr and Kristine Uhlman/UmHani, testified (by telephone) to the subordinate role of women in Islamic countries and the attendant legal difficulties Ms. Long would experience in seeking return of her children were Mr. Ardestani to attempt to keep them in Iran. R. App. 024-042, 067-091. The briefs of both Ms. Long and the GAL describe their testimony in detail.

What may not be clear from the other parties' briefs, however, is that both Dr. Badr's and Ms. Uhlman's testimony was expressly predicated upon the assumption that the father (in this case, Mr. Ardestani) would deny the children permission to leave. See, e.g., R. App. 030, 031-32, 033, 076, 078, 080-81. Ms. Uhlman specifically acknowledged that the Iranian government would allow the children to leave so long as they had the father's permission; R. App. 078, 079, 080-81; Dr. Badr did not address the children's ability to return safely under such circumstances. Neither Dr. Badr nor Ms. Uhlman professed any knowledge of Mr. Ardestani's intent or of any other facts and circumstances of the case at bar.

At no point in the questioning did Ms. Long's attorneys attempt to elicit any testimony from Ms. Uhlman about what later came to be characterized as the danger of conscription into the Iranian Army. The fleeting reference to conscription upon which Ms. Long later seized appears in the following dialogue between Ms. Uhlman and the GAL:

> Q. Ms. Uhlman, my name is Greg Bonney. I'm the Guardian ad Litem for the minor children. I believe you testified earlier that the girls would not be allowed -- Ardestani girls would not be allowed to leave Iran without the written permission from their father until they're married?

A. Correct.

Q. What about the boys?

A. The boys. The age at which they would allowed to travel on their own tends to vary. My understanding is that it can be anywhere between the ages of like 18 to 21. A young child in Iran, I believe, it's like around between the ages of 12-14 can be constricted [sic, conscripted] into the Army, and so there is some observation of children entering, male children entering and leaving the country. Because it's been a problem in Iran that families, in an effort to avoiding [sic] their boys being drafted into the Army, that families send their young children out of the country for education, so they could avoid their military obligation. So, in addition to the Islamic practice, there's some government procedures that could interfere with the boys being allowed to exit the country.

Q. *So, what I'm hearing you say is, up until a minimum age of 18 the male children would need their father's permission to leave the country?*

A. *That's my understanding, yes.*

R. App. 087-88 (emphasis added). Ms. Uhlman then volunteered that, were something to befall the father (i.e., Mr. Ardestani), the children could be removed from Iran by the next person of authority within the male line of the father. R. App. 088-89. Finally, Ms. Uhlman again emphasized that, in returning from Iran, the father's permission is paramount.

Q. [By Mr. Bonney] So am I right *in kind of summarizing your testimony* and saying if the children are taken to the Country of Iran, *we're pretty much relying upon the father's good faith in getting them back,* or allowing them back into the States?

A. *Correct.*

R. App. 089 (emphasis added). Nowhere did Ms. Uhlman suggest that a twelve-year-old child like Farshaun, much less a ten-year-old like Kamran, would be detained by Iranian authorities if the father gave permission to leave.

Ms. Long. Ms. Long testified that, based upon various threats allegedly made by Mr. Ardestani during their marriage, she feared Mr. Ardestani would attempt to keep the children in Iran. R. App. 097-101. Apparently the only time Mr. Ardestani said he would take the children in so many words was eighteen years ago; thereafter the message was implicit (e.g., "You know what will happen"). Ibid. The last time Mr. Ardestani made even such an implicit threat was when Ms. Long asked him for a divorce in May of 1998. R. App. 100. Ms. Long also acknowledged that Mr. Ardestani had, on two separate occasions, taken his two daughters and his oldest son to Iran and returned without incident (this, despite what Ms. Long now says were her fears he would not), R. App. 116, 118-20; that their youngest son, Kamran wants to go with Mr. Ardestani to Iran, R. App. 117; that Mr. Ardestani's mother is ill, ibid; and that Mr. Ardestani's brother,

Mostafa, who also lives in Prairie du Chien, is well liked by the Ardestani children and has interceded on their behalf. R. App. 096.

Mr. Ardestani. Mr. Ardestani denied that he had ever threatened to take the children away. R. App. 122. He explained that he wants his children to see his other relatives and the culture he came from, R. App. 125, and that it was important to visit Iran this year because he did not know whether his parents (especially his mother) would be alive next year. R. App. 128, 131. This is particularly important because his youngest son, Kamran, has never met them, and his older son, Farshaun, only met them once when he was quite young. R. App. 128, 131-32. Mr. Ardestani has looked into the possibility of bringing his parents to the United States or to some third country (e.g., Italy), but they are old, and he has encountered substantial difficulties, financial and bureaucratic, in arranging for such a visit. R. App. 131-32.

Mr. Ardestani readily conceded that it would be devastating to the boys if they were taken to Iran and not allowed to return, R. App. 129, but repeatedly denied that he would ever separate them from their mother. R. App. 123, 126, 127, 140-41. Mr. Ardestani testified that he would do

anything in his power for the interests of his children, R. App. 123; that he was an active member of the community for the last fifteen years, ibid.; that he had family in Prairie du Chien (specifically, his brother, sister-in-law, and his niece), and that he would do anything that the court asked to guarantee that his children would come back safely. R. App. 125. Mr. Ardestani explained that it would make no sense for him to forfeit his life in Wisconsin:

> Your Honor, I have my retirement here. I have a career here. I'm not going to give up my career and my retirement. I've got ten years left. To do what? Get even with Lori? To hurt my children? I love our children that much to thank, to see them more. Does that make sense where I take them away, separate them from their mother or their brother and sisters: I would never do that.

R. App. 127. When counsel for Ms. Long suggested that Mr. Ardestani might be able to transfer his retirement benefits to Iran were he to decide not to come back, Mr. Ardestani volunteered to pledge "all my retirement, everything I have" to ensure his return -- a response that apparently caught counsel for Ms. Long by surprise. R. App. 129.

The Social Worker. Ms. Julie Williams, social worker for the two boys, testified that neither of the two boys currently demonstrates any fear about being with their father. R. App. 056-57. Despite the fact that "some

people" have told the boys that their father might not bring them back, R. App. 060, the boys have never expressed any concern about not being allowed to return to the United States were they to travel to Iran. R. App. 059. The youngest child, Kamran, is very excited about going. R. App. 060. According to Ms. Williams, the older son, Farshaun, is less enthusiastic, but only because it would take him away from other activities with his friends for several weeks -- a reaction, she notes, typical for his age. Ibid. (These same attitudes were later echoed by the GAL, see R. App. 165). Ms. Williams, who was familiar with Mr. Ardestani, also confirmed the closeness of the boys to Mohammed's brother Mostafa. R. App. 060-61. Finally, Ms. Williams testified that she did "not have any reason to believe that Mr. Ardestani would want to separate his children from his [their] mother based on what he has said or behavior he has had." R. App. 061, 065.

The GAL also presented a psychological evaluation of Mr. Ardestani, which concluded that Mr. Ardestani's emotional reactions to problems

involving his children were cultural, and not indicative of mental problems or a propensity towards violence. R. App. 049-050, 148; R. 65 [Ex. 2].[1]

The Argument. At the conclusion of the hearing, counsel for Ms. Long focused entirely on the risk that Mr. Ardestani would not be true to his word; no suggestion was made that travel to Iran presented any danger to the children if Mr. Ardestani were to act as he promised he would. R. App. 133-140. The Guardian ad Litem conceded the reasonableness of the request, but recommended that the children and Mr. Ardestani "be accompanied by trusted adult male relative, agreed upon by the parties, for the trip. Preferably Mostafa Ardestani." R. App. 141-145. Mr. Ardestani repeated his pledge to return with his children, R. App. 140, further explaining that he did not want to return permanently to Iran: "I work hard for twenty years. I don't want to go back to live there. I want to be here." R. App. 141.

The Judge's First Decision. At the conclusion of the hearing, the Court acknowledged that it was "quite clear" that "should Mr. Ardestani

[1] The court admitted this Exhibit, but denied admission of a similar report proffered by Mr. Ardestani. R. App. 127-129.

take the children to Iran and decide not to return, that there would be little that could be done to force him to return." R. App. 146. However, the Court observed, "the question is what is the likelihood that Mr. Ardestani would do that." R. App. 147. Acknowledging that Ms. Long's fear was real, the Court examined the evidence and concluded that, Ms. Long's fears notwithstanding, there was no likelihood that Mr. Ardestani would fail to return. R. App. 149-50. The Court entered an Order denying Ms. Long's motion, R. App. 153-54, and Mr. Ardestani posted a performance bond, approved by the court, in which he assigned to the clerk his interest to his 3M pension, retirement and voluntary investment program benefits to secure his prompt return to Wisconsin with his children. R. App. 155-56, 157.

Reconsideration.

Not satisfied, Ms. Long appealed and sought a stay pending appeal, which the trial court denied but this Court granted. Ms. Long then filed a motion to reconsider accompanied by an affidavit from Ms. Uhlman to the effect "that boys at age 12 or older are routinely drafted into military service in the country of Iran." R. App. 178.

June 23 Hearing. The motion for reconsideration was taken up at two separate hearings. On June 23, 2000, the Court heard the telephonic testimony of Mr. K. Alipour, who is in charge of the legal affairs at the Iranian Interest Section in the Pakistan Embassy in Washington, D.C. R. App. 191-92. Mr. Alipour, who was born and raised in Iran and served in the military there, testified that, under both the Iranian Constitution and the Statutes of Iran, male Iranian citizens are eligible for the draft once they reach the age of eighteen (but not before) and go into military service at age nineteen unless they are continuing their education. R. App. 192-94. Mr. Alipour explained that the only time Iran has drafted men earlier than age eighteen was during the Iran/Iraq War from 1980-1987. R. App. 193. Mr. Alipour denied that boys younger than eighteen would be drafted were they to travel with their father to Iran, denied that the Iranian government would detain children so that they did not leave the country before becoming eligible for military service, and testified that there are many Iranians or spouses of Iranians who come and go from Iran with their families now that the Iran/Iraq War is over. R. App. 194-97. He further explained that, should something happen to Mr. Ardestani while he was there, either the children's mother or their close relative could go to Iran and retrieve them.

R. App. 197. Mr. Alipour simultaneously faxed to the Circuit Court a letter confirming the Iranian age of conscription. R. App. 206.

Mr. Ardestani also attempted to introduce a printout from the United States Central Intelligence Agency World Factbook 1999, which gave Iran's military age at 21 and which calculated the availability of military manpower, "in wartime" between the ages of 15 to 49. R. App. 183. The Court ultimately refused to admit the evidence on the grounds that it was hearsay. R. App. 224-25.

June 28 Hearing. On June 28, 2000, another hearing was held. Ms. Long was unable to produce Ms. Uhlman and requested a continuance, R. App. 210-12, but Mr. Ardestani objected that the substance of her testimony had already been presented by affidavit and that the summer was wasting away. R. App. 213-14. Aware that the Court of Appeals was anxious to resolve the matter, the court denied the motion for continuance, but said it would consider Ms. Uhlman's affidavit. R. App. 216.

Counsel for Ms. Long then presented an offer of proof to the effect that, were Ms. Uhlman to appear, she would testify (in addition to the matters set forth in her affidavit) that she had "specific information that

there were teenagers who had served in the Iranian Army under the age of 18"; that she was aware of another case in which an Iranian/American "was not comfortable traveling to Iran once his son turned age 12"; and that it was "common practice" to send "teenagers" out of Iran to avoid the "possibility" of being drafted. R. App. 217.

At the same time, Counsel for Ms. Long conceded that Ms. Uhlman's testimony would be hearsay, R. App. 219; was unable to state whether Ms. Uhlman's testimony would relate to events occurring during the Iran/Iraq War or afterward, ibid.; acknowledged that it was possible that the Constitution in Iran sets the draft age at eighteen, R, App. 217; and admitted that Ms. Uhlman was not aware of any situation in circumstances similar to those now at bar in which a teenager had been brought to Iran for a visit and was then drafted into military service. R. App. 217-18.

Finally, counsel for Ms. Long conceded that her concerns about conscription would go "only to Farshaun [then age 11, now 12], and would not have an impact about Kamran [age 10]." R. App. 218.

Decision on Reconsideration. At the end of the hearing, the Court once again denied Ms. Long's motion. The Court did not believe there was

a reasonable possibility that Mr. Ardestani would keep the children in Iran if he took them there on vacation *"whatever the burden is,"* and felt that Mr. Ardestani's pledge of his pension benefits, combined with his other ties to the United States, was sufficient to ensure his return. R. App. 226-27. The court also concluded that Mr. Alipour's testimony was credible and logical. R. App. 227. That being so, the court concluded that "during these times" (i.e., a decade after the cessation of the Iran/Iraq war) there is no "reasonable likelihood or probability that the children would be drafted, any of the children would be drafted during this trip to Iran with their father." Ibid. An order reflecting his ruling was then entered. R. App. 230.

At this point, the Court of Appeals appointed the undersigned to represent Mr. Ardestani. Because there was still time to accomplish the trip before school began in the fall, Mr. Ardestani filed an emergency motion to vacate the stay (which still remained in effect). This Court denied that motion on July 21, 2000.

ARGUMENT

THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION IN ALLOWING MR. ARDESTANI TO TRAVEL WITH HIS CHILDREN TO IRAN.

Introduction

There is *no* question that, were it not for the specter of risk raised by Ms. Long, a trip to Mr. Ardestani's homeland by one or more of the Ardestani children in time to meet his aging parents would be in the best interests of both the children and Mr. Ardestani. Courts recognize this, see infra. at 42; Ms. Long concedes it, see Long Brief at 10; the human heart confirms it.

There is, moreover, no *legitimate* question that the Ardestani children will return from Iran, safely and promptly, if Mr. Ardestani intends them to do so. The risk of conscription is an afterthought based on memories of a war whose guns fell silent before the oldest Ardestani boy was born, and which is directly contradicted by competent authorities with knowledge of contemporary Iranian affairs.

No, the only question is whether Mr. Ardestani intends to return with his children. That question -- a question of fact and, then, largely one of

credibility -- was resolved, not once, but twice by the trial court, who fashioned terms and conditions to ensure that result.

There is, of course, an unquantifiable but irreducible risk that the trial court was wrong. But that is true in every case, including many involving consequences just as dire as Ms. Long and the GAL portray them here. There is no guarantee that *any* parent granted unsupervised visitation will not abduct the child or commit some other desperate act. But it is the trial court's peculiar province in each case to assess the degree of risk and determine whether it is manageable with the tools available to it. To hold, as Ms. Long and the GAL suggest, that no parent may take a child beyond the effective reach of the court for any period of time and regardless of the protections in place would not only discriminate against those divorced parents unfortunate enough to come from disfavored cultures, but would irrationally elevate one class of risk over other, equally important classes.

The trial court's decision was amply supported by credible evidence, consistent with applicable law, and squarely within its appropriate role. It should be affirmed.

A. There is no legal prohibition or public policy against allowing a child to travel beyond the jurisdiction of the court.

Visitation is a "right of the child which is not to be subverted by the custodian." Marotz v. Marotz, 80 Wis. 2d 477, 486, 259 N.W.2d 524 (1977). By statute, "[a] child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health." § 767.24(4)(b). The statute sets forth several factors to consider in determining issues of legal custody and physical placement, of which only two appear arguably relevant to the case at hand:

> (g) [w]hether one party is likely to unreasonably interfere with the child's continuing relationship with the other party[; and]
>
> * * *
>
> (k) [s]uch other factors as the court may in each individual case may determine to be relevant.

Wis. Stats. § 767.24(5)(g),(h).

In determining visitation rights, the welfare of the child is of "paramount" (albeit, not exclusive) concern. Krause v. Krause, 58 Wis. 2d 499, 512, 206 N.W.2d 589 (1973); Wis. Stats. Ann. § 767.24, Comments to 1987 Act 355 at 227 (West 1993). Since visitation privileges exist to promote the best interests of the child, that standard "applies to the

determination of what is reasonable visitation in a given case." In re Custody of L. J. G., 141 Wis. 2d 503, 510, 415 N.W.2d 564 (Ct. App. 1987). Ultimately, however, matters of custody and physical placement are committed to the sound discretion of the trial court. Id. at 510-11.

There is no principle of Wisconsin law of which we are aware which restricts a court from allowing visitation rights outside the State of Wisconsin (or, for that matter, outside of the United States). In enacting the predecessor statute to § 767.24, there is no indication that the Legislature ever considered whether the noncustodial parent had a right to take the child out of the state. L.J.G., 141 Wis. 2d at 508. As a result, this Court has concluded, courts "possess the authority to limit visitation to the confines of the state." L.J.G, 141 Wis. 2d at 507. On the other hand, they are not obligated to do so; "[m]atters relating to visitation are committed to the discretion of the trial court." Ibid. See also Krause, 58 Wis. 2d at 512 (assuming that parent has right to permanently remove the child from the jurisdiction, subject to the "controlling consideration" of the welfare of the child).

Certainly, Wisconsin courts have not enunciated any legal barrier to out-of-state visitation; they have allowed children to be taken outside the

jurisdiction, even permanently, even though such removal always presented the practical risk of losing jurisdiction over the children. Cf. Whitman v. Whitman, 28 Wis. 2d 50, 135 N.W.2d 835 (1965) (permitting out-of-state custody), and Patrick v. Patrick, 17 Wis. 2d 434, 117 N.W.2d 256 (1962) (permitting out-of-state visitation), with Long v. Long, 127 Wis. 2d 521, 532 n.6, 381 N.W.2d 350 (1986) (noting risk of losing jurisdiction prior to widespread adoption of Uniform Child Custody Jurisdiction Act).

We appear, therefore, to be writing on a clean slate, albeit one clearly within the peculiar province of the trial court.

B. The ultimate inquiry in such travel -- one committed to the trial court's discretion -- is whether there is adequate protection against the risk of nonreturn or other danger.

Although no reported Wisconsin decision appears to have addressed whether and under what conditions one parent may be permitted to travel with a child outside the United States, a number of courts in other jurisdictions have. Examination of those decisions, some of which permit such travel and some of which deny it, demonstrate that there is no blanket

prohibition. The inquiry, rather, is whether such travel entails a risk of abduction or other danger, and whether that risk is manageable.[2]

There are, as Ms. Long and the GAL point out, a number of cases in which the reviewing court upheld a trial court's *discretionary* refusal to allow a parent's request for foreign visitation. Without exception, however, these decisions are predicated upon the trial court's determination that there was a real and unmanageable risk of abduction. See, e.g., Turner v. Turner, 169 A. 873 (N.H. 1934) (mother denied rights to travel with child to France where her previous attempts to take child without leave of court cast doubt on her professed willingness to conform to whatever terms and conditions the court might impose to ensure return); Soltanieh v. King, 826 P.2d 1076 (Utah Ct. App. 1992) (discretion of trial court to impose geographic restrictions on husband's right of visitation upheld based upon unchallenged findings that, among other things, husband had no respect for U.S. law, wanted to prevent daughter from being exposed to American culture, and believed he was justified in doing anything necessary to remove daughter

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[2] There are other cases which deal with the appropriateness of such foreign visitation in light of other factors, e.g., excessive temporal separation from one parent or another, see, e.g., Michael N. G. v. Elsa R., 586 N.Y.S.2d 788 (N.Y. App. Div. 1st Dep't 1992), but these are not instructive for our purposes.
(continued)

from the United States); Mitchell v. Mitchell, 311 S.E.2d 456 (Ga. 1984) (discretion of trial court to restrict visitation to United States upheld based in large part upon history of abduction and counter-abduction); Al-Silham v. Al-Silham, No. 94-A-0048 (Ohio Ct. App. Nov. 24, 1995), affirming No. 93-A-1770, 1994 WL 102480 (Ohio Ct. App. Mar. 25, 1994) (affirming trial court's discretion to refuse father unsupervised visitation based on wealth of evidence tending to suggest husband intended to abduct child). Compare Al-Zouhayli v. Al-Zouhayli, 486 N.W.2d 10 (Minn. Ct. App. 1992) (court upholds order allowing father's unsupervised visitation within four-county area where mother failed to show that risk of abduction was so high as to require supervision; husband apparently did not wish to take child outside geographic restrictions).[3]

What Ms. Long and the GAL fail to observe, however, is that at least as many cases have allowed one parent to take a child on a foreign vacation

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[3] Other cases denying requests for foreign visitation may be found, but are uninstructive. See, e.g., Graham v. Graham, 572 N.Y.S.2d 800, 802 (N.Y. App. Div. 3d Dep't 1991) (request to take children on vacation to Jamaica denied without discussion and with leave to make application "[s]hould an appropriate circumstance arise"); Bergstrom v. Bergstrom, 320 N.W.2d 119 (N.D. 1982) (trial court's decision to restrict visitation to United States upheld, based on 14-year-old child's preference).

despite the other parent's concerns about the possibility of nonreturn or other dangers. For example, in Milne v. Goldstein, 20 Cal. Rptr. 903 (Cal. App. 1962), a divorced father sought to have his daughters visit him in Johannesburg, South Africa for six weeks each summer; the mother expressed concern that the father might not return the daughters. The trial court allowed the visit, and the appellate court affirmed. Even though it was possible that the father might petition the South African court to modify the divorce decree and award him exclusive custody of the children, the court observed, the record furnished no indication that he would do so. Id. at 906.

Where one party raises the possibility of abduction, the matter usually boils down to a question of credibility, that is, "an appraisal of the character, temperament, and disposition of the contending parents, some of the determining marks of which may reveal themselves to one who sees and observes the persons concerned but are not to be found in the typewritten pages of a cold record." In re Marriage of Ross, 608 P.2d 1214, 1216 (Ore. 1980) (affirming trial court's decision to allow sons to visit father in Europe during the summer despite mother's concerns that father might not return children to the United States). See also Al-Silham, 1995 WL 803808, at *3 ("as is so often the case in domestic matters, credibility was a key issue").

Where there is any concern, moreover, courts will attempt to deal with it by requiring a performance bond or some other security. See, e.g., Milne (return secured by substantial pledge of stock); Creech v. Creech, 367 So. 2d 1244 (La. Ct. App. 1979) (mother's concern that father might not return children from Mexico addressed by requiring father to post bond); Markus v. Markus, 427 N.Y.S.2d 625 (N.Y. App. Div. 1st Dep't 1980) (mother's concerns that father would not return from Israel addressed by requiring father to petition Israeli court to amend custody award to conform to New York decree to stipulate to continuing jurisdiction of New York courts); Grassi v. Grassi, 334 N.Y.S.2d 127 (N.Y. App. Div. 2d Dep't 1972) (requiring father to post bond as condition to taking children to Italy for a one-month visit); cf. Lyritzis v. Lyritzis, 391 N.Y.S.2d 133 (1977) (holding that imposition of bond as precondition to removal of son from the United States was not justified in absence of any evidence suggesting inclination to abduct); and Lolli-Ghetti v. Lolli-Ghetti, 556 N.Y.S.2d 324 (N.Y. App. Div. 1st Dep't 1990) (allowing children to visit father in Monaco despite mother's fear of abduction, but reversing bond requirement where there was no evidence suggesting an intent to abduct).

Many of these courts allowed foreign visitation despite the acknowledged possibility that their own decrees could be disregarded or circumvented by the foreign court's. See, e.g., Milne; Markus; In re Marriage of Hatzievgenakis, 434 N.W.2d 914 (Iowa Ct. App. 1988) (allowing visit to Greece despite mother's fear of abduction). Even those courts which denied a parent's request for foreign visitation have acknowledged that "the unwillingness of the noncustodial parent's native country to enforce the trial court's custody order *is not controlling*." Al-Zouhayli, 486 N.W.2d at 13 (emphasis added). See also Mitchell, 311 S.E.2d at 459 (court has *discretion* to prohibit removal of children from country based upon practical inability of remaining parent to obtain relief in the foreign country). Indeed, a xenophobic unwillingness to trust foreign jurisdictions may be counterproductive to public policy; "[o]ur hope for justice for our citizens in foreign courts can best be forwarded by our efforts to offer fair and equitable treatment to foreign nationals in our jurisdiction." Hatzievgenakis, 434 N.W.2d at 917.

Nor does the possibility of other danger necessarily prevent visitation in a foreign land. For example, in Milne the mother also expressed fear for her children's safety in South Africa and presented some evidence of social

unrest and violent incidents. Such abstract risks, however, were not a sufficient reason to deny foreign visitation:

> It is of common knowledge that there are many areas throughout the world that are beset with political and racial conflicts, but this is mere knowledge of general conditions that have become notorious, and it does not extend to isolated events that occur from day to day.

Id., 20 Cal. Rptr. at 909. Indeed, courts routinely recognize that they cannot *guarantee* safety anywhere, and so engage in a pragmatic assessment of actual risk. See, e.g., Lazarevic v. Fogelquist, 668 N.Y.S.2d 320, 325-26 (N.Y. Sup. Ct. 1997) (allowing custody of child to be transferred to American military base in Saudi Arabia, despite guardian ad litem's claims that the compound and residents were "sitting ducks in a volatile region already targeted and attacked by terrorists"; said the court, "[T]here is no place in the world where a person is absolutely safe from a terrorist attack or, indeed, where a person is safe from an attack of random violence"); Santucci v. Santucci, 535 A.2d 32, 34-35 (N.J. Super. Ct. 1987) (granting mother the right remove children to El Salvador despite recognition that sometimes foreigners were "targets," since educational value of experience outweighed risk); Jordan v. Jordan, 439 A.2d 26, 30 (Md. Ct. Spec. App. 1982) (allowing change of custody to South Africa; "[i]n today's world, if

we permitted parents to take their children only to those countries of whose political systems we approve, or where no possible threat of violence could occur, we would probably have to limit travel to the regions of outer space . . .").

It is clear, therefore, that the ultimate inquiry is a very pragmatic one, and one committed to the sound discretion of the trial court.

C. The trial court had ample grounds upon which to determine that there was no reasonable possibility Mr. Ardestani would deliberately keep his children in Iran.

The trial court determined that, while Mr. Ardestani *might* keep his children in Iran, he did not believe that there was a reasonable possibility he *would* do so. R. App. 226. Nor could the abstract possibility be "boot-strap[ped]" into greater significance simply because of the consequences of being wrong. R. App. 226-27. It is, as the court explained, akin to the possibility that one could be struck by a car outside the courthouse—potentially devastating, but remote and manageable. R. App. 226.

There was a wealth of facts and circumstances, in turn, upon which the trial court could reasonably base its conclusion:

- Mr. Ardestani has spent over twenty years (that is, approximately two-thirds of his adult life) in the United States, most of which was in Prairie du Chien.

- Were Mr. Ardestani to decide to remain in Iran with some of his children, he would leave behind not only his remaining children, but his brother Mostafa, Mostafa's wife and child, his career at 3M, and an entire network of relationships built up over the last twenty years.

- Were Mr. Ardestani to fail to return, moreover, he would lose his accumulated retirement and pension benefits -- security which Mr. Ardestani *volunteered* to pledge to secure his return.

- Although Mr. Ardestani does have other relatives who still live in Iran, the most significant ones—his parents—are nearing the end of their lives.

- Mr. Ardestani had traveled to Iran at least twice before with some of his children and returned without incident.

- The court was well acquainted with the history of the divorce proceedings and had many opportunities to observe both Mr. Ardestani and Ms. Long and assess their respective credibility.

- Mr. Ardestani voluntarily notified Ms. Long of his intent to travel to Iran months before he was required to do so, and thereafter has complied with the agreed-upon court procedures for making such a trip.

Indeed, the last factor may be the most significant—if Mr. Ardestani really wanted to abduct one or more of his children, he could easily have done so without submitting to this lengthy and increasingly frustrating process. See generally, Creech, 367 So. 2d at 1246 (noting that, had father

intended to abduct children, he had ample time to do so during ordinary visitation).[4]

Was there *any* evidence that Mr. Ardestani *might* attempt to keep his children? Yes. It consisted of the testimony of Ms. Long to the effect that Mr. Ardestani had in the past threatened to take her children. The trial court acknowledged these statements, but concluded they were outweighed by Mr. Ardestani's testimony, by the assessment of various other unbiased persons, and by the totality of the circumstances. That this was well within the trial court's fact-finding function is, we respectfully submit, beyond any legitimate debate.

D. There is no credible evidence that pre-teens traveling to Iran are at risk of being detained or conscripted today, 12 years after the end of the Iran/Iraq war.

Ms. Long's original objection to Mr. Ardestani's proposed travel was based entirely upon her fears that he would not return with the children; she made no suggestion at the initial hearing that her children would be in any

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[4] If one doubts that this is so, simply peruse the countless photographs of missing children which appear on milk cartons and in mailbox fliers. In fact, there are 350,000 cases of parental child abduction reported each year in the United States alone (of which less that 3% involve overseas takings). Cara L. Finan, Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction, 34 Santa Clara (continued)

sort of physical danger or risk of detention should Mr. Ardestani choose to return as he said. Not until Ms. Long appealed did anyone even notice Ms. Uhlman's vagrant comment about conscription.

Neither that vagrant comment nor its subsequent elaboration is any basis upon which to reverse the trial court's decision. The comment itself was self-evidently a "throwaway." Not only did it go unnoticed by Ms. Long's attorney, the GAL, and the court, see Long's Brief at 7, n.1, but it did not in any way deter the same witness from concluding that the children's return is essentially dependent solely on the father's good faith. R. App. 089.

On reconsideration, moreover, it became clear that the specter of Iran dragooning an American pre-teen into its armed forces was wholly unfounded.[5] Demonstrating considerable resourcefulness, Mr. Ardestani (still appearing *pro se*) presented the testimony of the head of Legal Affairs for the Iranian Interest Section in the Pakistani Embassy in Washington, D.C. As described in greater detail supra at 13-14, Mr. Alipour

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L. Rev. 1007 (1994). One wonders how many of these abducting parents sought leave of court beforehand.

unequivocally dispelled the notion that children under the age of 18 were at risk of conscription or detention in modern Iran. This testimony is corroborated by the World Factbook of the Central Intelligence Agency, an organization hardly predisposed to paint Iran in a kinder, gentler light.[6]

In addition to this evidence, the trial court also had before it the implicit judgment of Mr. Ardestani, who has traveled to and from Iran with three of his four children on previous occasions, and whom no one has suggested would put any of his children in harm's way, no matter how much animosity he might bear toward his former wife.

Neither Ms. Uhlman's affidavit nor the offer of her testimony materially contradicts this assessment of the *current* situation in Iran. Her affidavit is not only patent hearsay but notoriously unspecific as to time. According to Ms. Long's offer of proof, the only specific information Ms. Uhlman would add to her affidavit is that there were teenagers (how many, is not said), who had served in the Iranian army (when, is not said)

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[5] However the Iranian military might choose to treat its native sons, the notion that it would really want an English-speaking, skateboard toting, MTV-conditioned, born-and-bred American pre-teen in its ranks strains credulity.

[6] Although the trial court excluded this evidence on the grounds of hearsay, see R. App. 224-25, it seems quite clear that an official publication of a Federal agency is *not* hearsay. See Wis. Stats. § 908.03(8).

under the age of 18 (how far below that age, is not said), and that one Iranian/American expressed discomfort at the thought of travelling to Iran with a 12 year old, all completely devoid of time or other circumstances.

Moreover, Ms. Uhlman would concede that the constitution of Iran might prohibit conscription before 18. Although she dismisses this fact because Iran's laws could change, such a statement can be made about any country, including our own.

Most tellingly, however, counsel for Ms. Long frankly conceded that Ms. Uhlman is not aware of any situation in which a teenager, brought to Iran for a visit in a situation similar to those in the case at bar, was drafted into military service.

Thus, even if we simply ignore the testimony of Mr. Alipour and the CIA's assessment and accept Ms. Uhlman's testimony at face value (which, of course, the trial court was under no obligation to do, and this Court may not do) we are still left with the same sort of generalized risks held not to preclude foreign visits or custody in Milne, Lazarevic, Santucci, and Jordan. Under these circumstances, the trial court's refusal to postpone proceedings even further was clearly within its discretion; not only was time of the essence, but Ms. Uhlman's testimony would not have changed a thing.

E. The risk that the children would be detained in Iran if "something" were to happen to Mr. Ardestani is unfounded.

The GAL (but, notably, not Ms. Long) raises the possibility that the children travelling with Mr. Ardestani might also be detained in Iran if "something" were to happen to him. There is no evidence in this record either that Mr. Ardestani is more susceptible to "something" than any other traveler, or that children travelling with him could not be retrieved if "something" befell him. In fact, the testimony of both sides supports precisely the opposite conclusion.

For example, Mr. Alipour testified that, should Mr. Ardestani die or become incapacitated, either the children's mother or a close relative could retrieve them. R. App. at 197. Ms. Uhlman also acknowledged that, if the father were to die or be incapacitated, the responsibility for the children travels to the next person of authority within the male line of the father. R. App. 089. Ms. Long, the boy's social worker, and the GAL all appeared to agree that that person—Mohammed's brother Mostafa, who also lives in Prairie du Chien—is a person who can be trusted to look after the best interests of the children and return them to the United States. Cf. R. App. 096 (Long: describing helpful intercessions of Mostafa and the children's

trust in him); R. App. 060-61 (Williams: describing trusted relationship between Mostafa and boys); R. App. 144-45 (GAL: recommending that travel be accompanied by Mostafa).

In short, the objection is unfounded.

F. Iran's failure to ratify The Hague Convention is significant only if Mr. Ardestani would refuse to return the children voluntarily.

Both Long and the GAL place great emphasis on the fact that Iran does not have diplomatic relations with the United States and is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. The significance of this fact is greatly overstated.

First and foremost, the Hague Convention is material only if and to the extent that one parent attempts to detain a child in a foreign country. But the absence of a remedy is immaterial if there is no occasion to use it. And there will be no occasion to use it if, as the trial court found, Mr. Ardestani intends to return his children from Iran. As a result (as noted supra at 26-27) courts do not view the unwillingness of a foreign country to enforce the terms of a domestic divorce decree as controlling.

Moreover, the implicit assumption that diplomatic relations or The Hague Convention are an effective guarantee against a determined abductor

is nothing but wishful thinking. The Hague Convention "is an imperfect instrument" which "does not always facilitate the return of children in cases where it should." Statement of Mary A. Ryan, Assistant Secretary for Counsel of Affairs, United States Department of State, before the Committee on International Relations, United States House of Representatives Concerning Implementation of the Hague Convention on the Civil Aspects of International Child Abduction (October 14, 1999), http://travel.state.gov/101499mar.html. According to the Department of State, there are a number of signatories to the Hague Convention which are considered "noncompliant" (including, somewhat surprisingly, Austria, Mexico, and Sweden). Id. Even in those countries which do comply with the Convention, there still exist a number of obstacles to recovery, not the least of which is actually locating the child. Id. And even if a child can be located, local courts often allow surprising defenses or impose onerous conditions to return. Id. (giving Germany, the United Kingdom, and Australia as examples). See also Susan L. Barone, International Parent Child Abduction: A Global Dilemma With Limited Relief, 8 N.Y. Int'l L. Rev. 95, 108-113 (Summer 1995) (describing difficulties to enforcement

presented by four express exceptions contained within the Hague Convention).

Thus, there are many "civilized" countries which have signed the Hague Convention and with which the United States has diplomatic relations from which obtaining the return of an abducted child would be virtually as difficult as from Iran. Are we to prohibit parents from visiting those countries with their children, too?

There is yet another reason why it is a mistake to overemphasize the relative unavailability of legal redress in Iran. A moment's reflection will reveal that there are literally countless situations in which a court, wittingly or not, authorizes one parent to expose a child to risk of harm which is beyond the court's effective power to prevent should things go wrong. Some of the risks have nothing to do with the parent's willingness to comply with the court's orders (ranging from sunburn to snakebite to plane crashes); others do (e.g., violence, abuse, or abduction even within the court's jurisdiction). The question, therefore, is not whether there is *any* risk; there always is. The question is whether the risk is manageable. And this is so whether the court is asked to approve a trip to Iran (where the children *might* be drafted) or to Yellowstone (where the children *might* be

devoured by a bear). Assessing the degree and manageability of such risk in each instance is the trial court's responsibility.

G. Although the party seeking to prevent visitation (here, Ms. Long) should bear the burden of proof, the issue is not material to the disposition of this appeal.

Both Ms. Long and the GAL argue that the trial court applied the incorrect burden of proof; the GAL contends Mr. Ardestani should bear the burden while Ms. Long contends it should rest on both parties. Although Mr. Ardestani believes that the burden should rest on the party seeking to prevent the visitation, the issue is irrelevant.

First and foremost, the burden of proof simply did not affect the trial court's ultimate decision. Although the trial court stated at the initial hearing that the burden was on Ms. Long, R. App. 146, both Ms. Long and the GAL ignore the fact that the trial court revisited the issue or motion for reconsideration and concluded that *it would reach the same conclusion no matter what the burden*. R. App. 226.

Second, Ms. Long has no standing to challenge the burden originally imposed on her. With advice of counsel, Ms. Long voluntarily entered into a Marital Settlement Agreement under which Mohammed Ardestani had the obligation to notify her of his intent to take any of the children overseas and

she had the obligation to obtain a court order to prevent him from doing so if she objected. Although Ms. Long seeks to dismiss this as a mere procedural nicety, see Long Brief at 9, it is black-letter law that the burden of persuasion falls upon the party who seeks to use judicial process to advance a position. See, e.g., Loeb v. Board of Regents, 29 Wis. 2d 159, 164, 138 N.W.2d 227 (1965). Ms. Long has not sought relief from that agreement or the judgment of divorce into which it was incorporated and must, therefore, live with its necessary implications.

But even if the burden of proof were an issue, it properly should fall upon the party who seeks to prevent visitation. Those few authorities in other jurisdictions which address the issue place the burden upon the party seeking to prevent the foreign visitation. See Al-Zouhayli, 486 N.W.2d at 12; Al-Silham, 1995 WL803808 at *3. Wisconsin authorities are not particularly instructive. See, e.g., Pamperin v. Pamperin, 112 Wis. 2d 70, 74-75, 331 N.W.2d 648 (Ct. App. 1983) (imposing equal burden on initial custody determination); Long v. Long, 127 Wis. 2d 521, 527-28, 381 N.W.2d 350 (1986) (rejecting trial court's imposition of burden on party seeking to permanently remove a child from the state); Gochenaur v. Gochenaur, 45 Wis. 2d 8, 172 N.W.2d 6 (1969) (relieving party of burden

of challenging custody stipulation entered into without benefit of judicial determination); Block v. Block, 15 Wis. 2d 291, 299, 112 N.W.2d 923 (1961) (implying that trial court had discretion upon whom to impose burden in suspension of visitation rights).

The significant distinguishing factor here, we submit, is that a temporary trip outside the country by a parent *already awarded joint custody and extended periods of physical placement* does not alter the status quo. It is simply a choice of activity to take place during visitation. By likening Mr. Ardestani's desire to go on a brief vacation to an initial request for custody, Ms. Long and the GAL effectively assume the truth of the proposition they seek to prove, i.e., that Mr. Ardestani will deprive Ms. Long of custody. But there is no basis upon which to make that assumption unless and until Ms. Long or the GAL adduces evidence tending to suggest he will, in which case the burden shifts to Mr. Ardestani to rebut their case. And, in fact, that is precisely what happened: Ms. Long presented evidence suggesting he might keep the children, and Mr. Ardestani rebutted it. But neither Mr. Ardestani nor any other parent should bear the initial burden of proving a negative.

In the end, the real question is not who bears the burden of proving or disproving risk. The real question is *how much risk* is acceptable. That question, we respectfully submit, is not now and never will be capable of reduction to a formula. It rests within the sound discretion of the trial court.

H. The trial court fully considered the best interests of the children in reaching its decision.

Courts have recognized that a child who is a product of two cultures "has a right to be introduced and exposed to both." Hatzievgenakis, 434 N.W.2d at 917. Children with a "dual heritage." observed one court, "have a right to grow up knowing their father in his own cultural environment. Indeed, the best interests of the children are served by such overseas visitation." Lolli-Ghetti, 556 N.Y.S.2d at 325. Even Ms. Long concedes that "there would be a benefit for these children to meet their grandparents and learn more about their father's first country." Long Brief at 10.

Despite this clear benefit, Ms. Long argues that "[a]t no point in the trial court's decision . . . does the court address the best interests of the children, nor does the court balance the benefits and the risks involved with a trip to Iran." Long Brief at 10. The argument misses the forest for the trees. The trial court's entire analytical process – both during the initial

hearing and on reconsideration – was directed at determining what was in the best interests of the children. Granted, it did not go through an extensive laundry list of factors, but that is because there were only two factors at issue: the risk of abduction and the risk of conscription. The trial court evaluated each risk and concluded that neither was sufficient to prohibit the trip. That being so, the undisputed importance of exposing children to the cultures of both parents necessitates the conclusion that the trip would be in the best interests of the children.

CONCLUSION

For the foregoing reasons, the order of the Circuit Court should be affirmed.

Dated this 25th day of September, 2000.

GODFREY & KAHN, S.C.

By:_____
Michael B. Apfeld #01016749

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RULE 809.19(8)(d) CERTIFICATION

I hereby certify that this brief and accompanying appendix conform to the rule contained in s. 809.19(8)(b) for a brief and appendix produced with a proportional serif font. The length of those portions of this brief referred to in s. 809.19(1)(d), (e), and (f) is 8777 words.

By:_____
Michael B. Apfeld

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State of Wisconsin

GARY R. GEORGE
SENATOR

May 2, 2001

The Honorable Mark Meyer
State Senator
Room 20 South, State Capitol
Madison, WI

The Honorable DuWayne Johnsrud
State Representative
Room 323 North, State Capitol
Madison, WI

RE: Senate Bill 89 and Assembly Bill 220, relating to prohibiting a parent who Has physical placement of a child from taking the child to certain foreign Countries without the agreement of the other parent.

Dear Senator Meyer and Representative Johnsrud:

You have asked for speedy consideration of the bills mentioned in the relating clause above.

It is our understanding that Senate Bill 89 and Assembly Bill 220 are intended to address the situation involving Lori Long f/k/a Lori Ardestani and her former husband Mohamed Ardestani and the intentions of Mr. Adestani to take the children of their former marriage to Iran to visit his parents. We are not sure that we are comfortable at this point, under pressure, to legislate in a way that satisfies this one particular case.

As we understand the facts of the underlying situation, the parties involved here fashioned a private remedy to address this situation. Now, the party that did not prevail through the agreed-upon private remedy is seeking the have the Legislature intervene on her behalf.

P.O. Box 7882, Madison, Wisconsin 53707-7882, 608/266-2500
Toll free: 1-877-474-2000 E-mail: Sen.George@legis.state.wi.us

As the co-authors of Senate Bill 89 and Assembly Bill 220, which are intended to address certain issues related to this situation you are no doubt familiar with the facts in this case; however, we repeat them here.

When the Ardestani's divorced in mid-1999, they included provisions in the judgement of divorce, entered on July 22, 1999, to the effect that if Mr. Ardestani desires to take the minor children out of the U.S., he must give 60 days notice to Ms. Long. Under those provisions, Ms. Long would then have 30 days to move the Crawford County Circuit Court for an order prohibiting the trip or requiring Mr. Ardestani to post a bond.

After Mr. Ardestani provided such notice in November 1999, Ms. Long moved the Crawford County Circuit Court for an order to prohibit travel of the type described in the judgment of divorce. In May 2000, a hearing was held before the Crawford County Circuit Judge who had heard the couple's divorce.

The trial court denied Ms. Long's motion to prohibit Mr. Ardestani from travelling to Iran with the children, but did, at her request, require Mr. Ardestani to provide and sign all documents with respect to his pension and retirement benefits necessary to provide Ms. Long with security to insure the return of the children. Mr. Ardestani complied with the order, filing a performance bond with the court, which assigns his entire interest on his pension, retirement and voluntary investment program benefits to the Crawford County Clerk of Courts for the benefit of Ms. Long, which assignment was to terminate when he returned the children and, if he did not, would make a distribution to Ms. Long as if he were deceased and she was his sole beneficiary.

Ms. Long appealed the trial court's ruling and asked the trial court, pending appeal to prohibit Mr. Ardestani from taking the children out of the U.S. The trial court denied the motion and an appeal was taken to the Court of Appeals, which heard oral argument on the motion and remanded the case back to the trial court for consideration of certain issues. Following a hearing on remand, the trial court, after hearing testimony on those issues, denied Ms. Long's motion for reconsideration.

The court of Appeals affirmed the decision of the trial court. Apparently, there was no further appeal of the case.

You have introduced companion bills, Senate Bill 89 and Assembly Bill 220, that provide that, if both parents of a child have periods of physical placement with the child, neither parent may take the child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of Child Abduction unless the other parent agrees in writing that the child may be taken to the country. This prohibition applies instead of the current law provision relating to removing a child or establishing a different legal residence with a child. In addition, the court must advise the parties of the prohibition when granting physical placement, and the prohibition must be included in the order of physical placement.

We have tried to be responsive to your offices by holding an immediate public hearing on Senate Bill 89, which occurred on April 26, 2001 in Eau Claire. This hearing was essentially to benefit the proponents of the legislation, but we have heard from the opponents of the legislation.

An amendment to the Assembly Bill provides that if a parent who has physical placement with a child desires or intends to take the child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of Child Abduction, the parent who desires or intends to take the child to such a country may, with notice to the other parent, file a motion, petition, or order to show cause with the court for permission to take the child. The court may grant the permission to take the child after considering, among other things, the likelihood that the parent will promptly return the child.

The question that is before the Assembly and now the Senate, with the amendment attached to the bill, is whether the current procedure for removal of a child will be amended to impose an additional burden upon individuals who wish to visit families in specified countries.

There are many issues involved here, but let's start with the first—whether or not the Legislature should respond to this situation with what is, essentially, a private bill. Our state constitution generally expresses a policy against the passage of private bills.

Basically, from what we have been able to gather from the public hearings and media coverage of the hearings it appears that any legislation short of legislation that blocks this particular man from taking these particular children to one particular country is not going to be sufficient to satisfy the demands of the proponents and that falls in the category of a private bill.

Because of the speed at which the request has been made to have this considered, there hasn't been an adequate opportunity to review this legislation. There has been some discussion among the family court commissioners and we have tried to examine how this would fit into our existing family law system but there are still questions about how this would work.

In addition, there is concern about possible racial aspects of the debate (as well as ethnic and religious aspects). This appears to be true, especially based upon some comments that were made in the hearing before the State Assembly committee.

The debate focuses on the Hague Convention on the Civil Aspects of Child Abduction and the nations that have not signed this treaty. Many of the countries that have not signed this treaty are "Third World" countries—non European countries. It is difficult to believe that we want to set a prohibition in place that would affect U.S.-based and Wisconsin-based families that may be related to the tens of millions of people who live in countries such as India and Nigeria that have not signed this accord. The consequences, including those not foreseen at present, could be very great in some of these countries. It is worth fully examining these consequences before we pass this legislation.

While we are happy to help here, it seems that the goal here is to win in the Legislature what could not be won in the courts, twice—both at the trial level and on appeal. Accordingly, while are willing to continue to examine whether or not the law is dysfunctional, it is hard to believe at this point that it is a responsible thing for us to do to pass what is in essence a private bill. We will continue to discuss whether or not it is a private bill and whether it makes sense to pass it, but these are our concerns.

Senator Meyer has been a strong and persistent advocate on this issue and on this legislation, pushing very hard to see that it is done, but the consequences of its passage extend far beyond the impact on this one particular family. It has the potential to cause additional strain on both court commissioners and family court judges and it really may not be prudent to act without consultation with the judiciary and the others who would be affected.

We would be happy to discuss this with you and to meet with the family, and the proponents of this legislation and their counsel, to discuss this, and we would also be happy to meet with the opponents as well, either together or individually. We would be happy to meet on Tuesday morning, prior to session.

Sincerely,

Gary R. George

GARY R. GEORGE
State Senator
Sixth Senate District
Chair, Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform

Cc: Senate Majority Leader Chuck Chvala
Assembly Speaker Scott Jensen

Conversation w/ Mohamed Ardestani 5-1-01

Divorce Decree provides
30 days notice if want
if she says no, then would make
motion to the court

In this case
MA gave notice she went to
court; MA won in Crawford Co.
LL appealed to Court of Appeals, MA
won in C/A; LL did not appeal to S.Ct

o religion on children

three divorce
went to court every couple months

in that town, she is related to
everyone
atty's husband is policeman
nephew is detective
clerk of court - baby sitter
GAL -
GAL's secretary was ex's best
friend

her stepfather is a member of
white supremacist group - in the
view of MA, he is force behind this

Conversation w/ Mike Apfeld

Lori Long testified
Wash ~~add~~ only Mr Andestani
all Iranians + possibly all arabs

out of blue

MA took children to Iran (before divorce) twice and returned

divorced in Crawford County
part of divorce decree – she agreed that if he wanted to take children out of the country had to give 30 days notice

tried before bored court judge who heard divorce case and no familiar w parties

both parents
experts
case worker
GAL
} testified at bond ctr hearing

posted a bond

has been in U.S. since 1979, is U.S. citizen
he
why would I give up job, life, friends.

Hague convention is absolutely relevant where parent has no intention

pledge 401k, savings, pension (all assets)

Ms. Long appeal to Ct of Appeals
then upheld

http://travel.state.gov/Hague_list.html
/2000_Hague_Compliance_Report.html

Cuba
Haiti

Costa Rica

Jamaica

Peru
Brazil

in Africa only { SA, Zimbabwe, Burkina Faso

Russia
Ukraine

only Hong Kong
India
Indonesia
Japan

judicial override
hearing
shift burden to parent seeking to take child
CAL
reasonable likelihood

wants to work on annual adjustment
se

court shall consider:

whether or not country is
party to Hague convention

travelling parents intent to
return

If parent really wants to abduct
children this law won't going to
stop - bill condemns good people
because of bad people

objecting parent shall have right to bring
issue whatever objection
including, but not limited to
whether or not country has stable
current political situation
intent to return

party proposing to
leave given
opportunity to
respond