IN RE CANNON: APPLICATION FOR REINSTATEMENT AS A MEMBER OF THE BAR.

November 14, 1931—January 12, 1932.

Constitutional law: Distribution of legislative and judicial powers: Attorneys at law: Prescribing qualifications: Admission to practice: Suspension and disbarment: Statutes: Act purporting to restore license of individual attorney revoked by court, and to remit judgment for costs: Validity: Freedom of speech: Criticism of courts: Character of restraints: Suspended attorney's application to court for reinstatement: Disposition.

1. The term "court" as used in the constitution (sec. 2, art. VII) means that governmental institution known to the common law possessing powers characterizing it as a court and distinguishing it from all other institutions. pp. 392, 393.
2. Such power, whether it be called inherent or implied, does not transcend the constitution, and may be taken away—just as all courts may be abolished—by the constitution; it exists independent of the constitution only in the sense that the power inheres in the courts established thereby, and exists by reason of their creation independent of any affirmative power expressly conferred. pp. 393, 394.
3. Prior to the adoption of the constitution, the courts of England, though concededly subordinate to Parliament, had exercised the right of determining who should be admitted to the practice of the law. p. 396.
4. Regarding the courts and the judicial power as an entity, the power to determine who shall be admitted to practice law is a constituent element thereof; and whether that element be said to be a part of the inherent power of the courts, or to be an essential element of the judicial power exercised by the courts, it is a power clearly belonging to the judicial entity. p. 396.
5. The people in adopting the constitution borrowed from England this judicial entity and made of it not only a sovereign institution but also a separate, independent, and co-ordinate branch of the government. They took this institution along with the power traditionally exercised to determine who should constitute its attorneys at law. p. 397.
6. The three great departments of the government being made separate and independent of one another, the idea that the legislature might embarrass the judiciary by prescribing inadequate qualifications for attorneys at law is inconsistent

with the dominant purpose of making the judicial department independent of the legislative, and such an intent should not be inferred in the absence of express constitutional provision. p. 397.

7. There is no express provision in the constitution which indicates an intent that this traditional power of the judicial department should in any manner be subject to legislative control. p. 397.
8. While the legislature may legislate in respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject, but is incidental merely to its general and unquestioned power to protect the public interests. p. 397.
9. The qualifications required of attorneys at law fixed by the legislature in order that public interests may be protected constitute only a minimum standard, and, while limiting the class from which the court must make its selection, do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the courts for the proper administration of judicial functions. p. 397.
10. There is no legislative power to compel courts to admit to the Bar persons deemed by them unfit to exercise the prerogatives of an attorney at law, pp. 397, 398.
11. Ch. 480, Laws of 1931, purporting to restore to a named person the license to practice law theretofore revoked by the judgment of the supreme court, remitting the costs imposed by said judgment, and authorizing such person thenceforth to exercise all the rights and privileges of a duly licensed member of the Bar, is void, because—

    (a) It invades the province of the courts and the judicial power conferred upon them by sec. 2, art. VII, Const., admission of attorneys to the Bar being strictly a judicial function. pp. 378–398.

    (b) It is not a general law applicable to all alike, and violates the constitutional guaranty of equality before the law. p. 398.

    (c) It is an unconstitutional attempt to exercise the power of appointment not in pursuance of a legislative function. pp. 399, 400.

    (d) The legislature is without power to revise a judgment of the court. pp. 401–403.

    (e) The judgment for costs having been imposed by judicial act as a part of disciplinary punishment authorized by statute, it is entirely beyond the scope of legislative power to interfere with that punishment. pp. 411, 412.

12. The citizen, in the exercise of the constitutional right of freedom of speech, has the right to criticise the courts in the interests of society, albeit such criticism should be well founded and directed to the correction of abuses; but whether well founded or not, the courts will not exercise any power in its restraint, such restraints as there should be being moral in character and proceeding from a wide-spread and deep-seated conviction of propriety. pp. 405–407.
13. Though an attorney at law is endowed with all the rights of a citizen, he is under a peculiar restraint, imposed by proprieties at least which do not rest upon the average citizen, as he takes an oath prescribed by the legislature to maintain the respect due to courts and judicial officers; but the force of this restraint is also moral in character, and will not be enforced by the courts. pp. 407–409.
14. Upon the application of a suspended attorney for reinstatement as a member of the Bar, the report of the State Bar Commissioners thereon filed pursuant to reference, and all the facts and circumstances adverted to in the opinion, it is determined that an order of reinstatement should be entered upon payment of the judgment for costs rendered at the time of such suspension. p. 411.

APPLICATION of Raymond J. Cannon for reinstatement as a member of the Bar. Original proceeding in this court.

William A. Hayes of Milwaukee and *Henry Lockney* of Waukesha, for the applicant.

Spencer Haven of Hudson, special counsel, for the Board of State Bar Commissioners.

For the State there were briefs by the *Attorney General* and *J. E. Messerschmidt*, assistant attorney general, a supplemental brief signed by *Fred M. Wylie*, deputy attorney general, and oral argument by *Mr. Messerschmidt*.

There were also briefs, as *amici curiæ*, signed by *J. G. Hardgrove* of Milwaukee; by *Maxwell H. Herriott* of Milwaukee, and *Lines, Spooner & Quarles* of Milwaukee of counsel; by the *Judicial Committee*, State Bar Association; and by *George A. Affeldt, Carl B. Rix, Albert B. Houghton, Hubert O. Wolfe, John F. Baker, George P. Ettenheim, Joseph E. Tierney*, and *William A. Klatte*, members of the executive committee of the Milwaukee Bar Association, and

Irving Fish and *Walter H. Bender* of counsel, all of Milwaukee.

OWEN, J. Raymond J. Cannon, a former member of the bar of this court, was ordered suspended from such office for a period of two years on the 5th day of July, 1929. *State v. Cannon*, 199 Wis. 401, 226 N. W. 385. The order of suspension, as an additional penalty, required the said Raymond J. Cannon to pay the costs of the original proceeding against him, which were taxed at the sum of $2,699.78. The costs thus taxed were not paid. On the 28th day of May, 1931, under the provisions of said order, he made application for his reinstatement. In accordance with the usual practice of this court, his application was referred to the Board of State Bar Commissioners, with instructions to make special inquiry and report with reference to the following matters: (1) the ability of the said Raymond J. Cannon, at the time of the entry of the order of disbarment, to pay and discharge the judgment for costs; (2) the present ability of the said Raymond J. Cannon to pay and discharge said judgment for costs; (3) as to whether the conduct of the said Raymond J. Cannon since the date of his disbarment gives assurance that if he be re-admitted he will observe the obligations of the legislative oath required of attorneys, with especial reference to that clause which requires an attorney to maintain the respect due to courts of justice and judicial officers; and (4) as to whether said Raymond J. Cannon made public charges against courts or judicial officers of this state embracing criminal misconduct, malfeasance in office, or immorality, and, if such charges were made, what basis in fact there was therefor. In obedience to said reference the Board of State Bar Commissioners made and filed its report with this court on the 19th day of September, 1931, to which reference will hereafter be made.

The application was argued before the court on the 14th day of November, 1931. Aside from the question of

ties are well-nigh unanimous that the power to admit attorneys to the practice of law is a judicial function. In all of the states except New Jersey (*In re Raisch*, 83 N. J. Eq. 82, 90 Atl. 12), so far as our investigation reveals, attorneys receive their formal license to practice law by their admission as members of the bar of the court so admitting. 6 Corp. Jur. p. 572; *Ex parte Secombe*, 19 How. 9; *Ex parte Garland*, 4 Wall. 333; *Randall v. Brigham*, 7 Wall. 523; *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646; *In re Day*, 181 Ill. 73, 54 N. E. 646; *Danforth v. Egan*, 23 S. Dak. 43, 119 N. W. 1021.

The power of admitting an attorney to practice having been perpetually exercised by the courts, it having been so generally held that the act of a court in admitting an attorney to practice is the judgment of the court, and an attempt such as this on the part of the legislature to confer such right upon any one being most exceedingly uncommon, it seems clear that the licensing of an attorney is and always has been a purely judicial function, no matter where the power to determine the qualifications may reside.

We are referred to the fact that the state of New York in 1931 passed an act admitting John G. Sargent to practice law. The act, which was vetoed by the governor, however, did not purport to confer upon Mr. Sargent the right to practice law. The act simply provided that "The appellate division of the supreme court in the first department is hereby authorized to admit John G. Sargent, formerly attorney general of the United States, to practice law in all the courts of this state, without examination and without compliance with any provision of statute or rule relative to the admission of persons to practice as attorneys and counselors at law in the courts of this state." This act fell far short of an attempt to confer the rights and privileges of an attorney at law upon Mr. Sargent. It did no more than to authorize the supreme court to admit him without proof of

his compliance with the provisions of statute or rule. This act plainly recognized the judicial function in conferring that right. So far as this act is concerned, it amounts to little more than a waiver of conditions precedent to admission to the bar required by the statutes. The same remarks apply to the provisions of ch. 458, Laws of the state of New York for the year 1921, which similarly authorized the court of New York to admit to the bar Woodrow Wilson, formerly President of the United States. Neither of these acts attempted to exercise the power of conferring upon selected individuals the privilege of practicing law. We have been referred to no other legislative attempts which can be compared with the act under consideration, and, even though such attempts were analogous to this, such precedents could be accorded no weight in an inquiry concerning the seat of power.

It appears that in New Jersey the attorneys are first licensed by the governor and then admitted by the courts. This seems to be due to a custom that was perpetuated from colonial times. Speaking of this custom in *In re Raisch*, 83 N. J. Eq. 82, 90 Atl. 13, 14, it is said:

"So far as I am aware, this anomaly is not found in any other state of the Union, although, perhaps, some modification of this statement may be necessary. Certain it is that in England and in our federal courts, and in the most of the courts of the states, the practice has been settled for years of having the courts appoint as well as remove these officers. It is beyond all dispute that attorneys at law and solicitors in chancery are not officers of the state; they are not removable by impeachment. They are officers of the courts and are removable by the courts."

The act is void for still another reason. Mr. Cannon was suspended from practice by this court in exact conformity to power conferred upon it by the statutes of this state. That act of suspension was a judicial act. Speaking of the power of the legislature to revise the acts and judgments of

the court, it is said in the Federalist (G. P. Putnam's Sons ed.) at p. 504:

"It is not true, in the second place, that the Parliament of Great Britain, or the legislatures of the particular states, can rectify the exceptionable decisions of their respective courts, in any other sense than might be done by a future legislature of the United States. The theory, neither of the British, nor the state constitutions, authorizes the revisal of a judicial sentence by a legislative act. . . . A legislature without exceeding its province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases."

In 6 Ruling Case Law, p. 162, § 163, it is said:

"Since the legislature does not possess and may not assume the exercise of judicial powers, it cannot interfere in any way with pending judicial controversies. Therefore the legislature cannot annul or set aside the final judgment of a court of competent jurisdiction, or take particular cases out of a settled course of judicial proceedings."

In *Janesville v. Carpenter*, 77 Wis. 288, 46 N. W. 128, the court considered a statute which made it "presumptively injurious to persons and property to drive piles, build piers, cribs, or other structures in Rock river within the limits of the county of Rock, and the doing of any such act shall be enjoined at the suit of any resident taxpayer without proof that any injury has been or will be caused by reason of such act." Of this law the court said, at page 301:

"The legislature usurped the judicial power of the courts by the enactment of this statute. It adjudicates an act unlawful and presumptively injurious and dangerous, which is not and cannot be made to be so without a violation of the constitutional rights of the defendant, and imperatively commands the court to enjoin it without proof that any injury or danger has been or will be caused by it. It reverses very many decisions of this court on the very questions involved in it, and which have the effect of a judicial determination of the defendant's rights of property. It violates sec. 2 of

art. VII of the state constitution, which provides that the judicial power of the state, both as to matters of law and equity, shall be vested in the various courts. It takes away the jurisdiction of the courts to inquire into the facts and determine the necessity and propriety of granting or refusing an injunction in such a case, according to the established rules of a court of equity. *Ervine's Appeal*, 16 Pa. St. 256. It is said in that case: 'That is not legislation which adjudicates in a particular case, prescribes the rule contrary to the general law, and orders it to be enforced. Such power assimilates itself more closely to despotic rule than to any other attribute of government.'"

The effect of the act under consideration was to nullify and set aside a judgment of this court. That this was beyond the power of the legislature is too plain to justify further citation or elucidation. For these various reasons it must be held that the act which purported to reinstate Mr. Cannon as an attorney at law was utterly unconstitutional and void and entirely impotent to accomplish that purpose.

This brings us to a consideration of Mr. Cannon's application for reinstatement upon its merits irrespective of the legislative act. Mr. Cannon was suspended from practice until June 30, 1931, "and for such period thereafter as shall expire before his license to practice law is restored and he is reinstated as a member of the bar by this court, upon the presentation of proof that the expenses of this proceeding have been paid, and upon the further condition that he shall, before being reinstated, satisfy the court both by his conduct from this time forward and by assurances then given the court that he will not, if reinstated, be guilty of such conduct as that involved in the charges made in the complaint in this action."

At the time of the pronouncement of this judgment the court was of the opinion that Mr. Cannon's suspension for a period of two years would be adequate penalty for the charges upon which he was found guilty. He has suffered

GODFREY & KAHN, S.C.

ATTORNEYS AT LAW
780 NORTH WATER STREET
MILWAUKEE, WI 53202-3590
www.gklaw.com

PHONE: 414-273-3500 FAX: 414-273-5198

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that penalty and, therefore, expiated the particular offenses involved in his prosecution. However, the court, having in mind that one of the purposes in suspending an attorney from practice is to bring about a regeneration of character, provided that as a condition of his reinstatement he should satisfy the court both by his conduct from that time forward and by assurances then given the court that he will not if reinstated be guilty of such conduct as that involved in the charges made in the complaint in this action. The terms of this suspension therefore placed a burden upon him to thus satisfy the court. While the particular phraseology of the judgment of suspension is that he shall satisfy the court that he will not be "guilty of such conduct as that involved in the charges made in the complaint in this action," it is plainly our duty to take into consideration all of the facts and circumstances bearing upon the question of whether he is a proper person to be again invested with the privileges of an attorney at law.

The report of the Board of State Bar Commissioners made pursuant to our reference, is to the effect that at the time of the judgment of suspension and the entry of judgment for costs herein Mr. Cannon was able to pay and discharge said judgment, although at the present time he is unable to do so. They also report that during the period of his suspension he did not charge any judicial officer with criminal misconduct or immorality, but during said period, on numerous occasions, he did publicly charge members of the supreme court and certain circuit judges of Milwaukee county with malfeasance in office, which charges were made without any basis in fact therefor. This reference was made to the Board of State Bar Commissioners because of Mr. Cannon's persistent, consistent, and notorious attacks upon the courts of the state during the period of his suspension, and it was deemed proper to investigate the question as to whether such charges had any foundation in fact, and for the further purpose of giving Mr. Cannon an opportunity to establish their truth. It appears from the proceedings had before the Board of State Bar Commissioners that Mr. Cannon now disclaims any intention or purpose of charging any judicial officers with any criminal misconduct or immorality, or any malfeasance in office. In the proceedings had before the Bar Commissioners, and in his application for reinstatement, he admits that he may have erred, that he did not at all times act calmly and dispassionately, that he did not follow the advice of his counsel, but is now convinced that he should have done so and gives assurance that if reinstated he will at all times endeavor to observe in good faith the code of ethics of the American Bar Association.

It is to be regretted that Mr. Cannon's attitude and conduct since his suspension raises a most serious question as to whether he is entitled to reinstatement. He did not accept the judgment of this court with that respect and obedience which becomes ordinary citizenship. He proceeded to make a public issue of the justice of his suspension, in pursuance of which he offered himself as a candidate for Justice of this court in the spring of 1930, and in 1931 became a candidate in opposition to Circuit Judge CHARLES L. AARONS, who was one of the three circuit judges who conducted the proceedings out of which grew the charges against Cannon resulting in his suspension. In these campaigns, and in other public utterances as well, he indulged in reckless and impetuous criticism of the courts of this state, which criticism was justified by no basis in fact. His remarks with reference to the courts have not been scrupulous, careful, or guarded. They have been most extravagant and, it is apparent, revengeful in character, and were founded more upon vague rumor or extravagant imagination than upon facts.

The right of Mr. Cannon to criticise the courts in his capacity as a private citizen cannot be challenged in this state. *State ex rel. Attorney General v. Circuit Court*, 97 Wis. 1,

72 N. W. 193. Here courts will not seek immunity from criticism by restraining the citizen or threatening the exercise of the right of free speech. In a democracy the best interest of society is promoted by according to the citizen the greatest freedom in the matter of discussing the relative qualifications of candidates for public office and of freely criticising any governmental department. He has a right to express his views upon the question of whether any governmental department is functioning in a manner to promote the general welfare. This freedom of discussion is important in order that the citizen may be advised concerning the affairs of his government and placed in the possession of facts which will enable him, with such discrimination as he may possess, to form intelligent conclusions.

The same power which created the other departments of the government created the courts. They are but governmental institutions set up for the service of society, and we can discover no ground upon which courts may protect themselves or their records from the freedom of discussion on the part of the citizens of the state. So Mr. Cannon as a private citizen had a perfect right to inveigh against the courts. In so doing he was in the exercise of the constitutional right of freedom of speech.

It may be remarked, here, however, that the cause of public welfare and the stability of government is illy served by stirring up unfounded prejudice against the courts. Their weaknesses and delinquencies are the proper subject of public comment. But comment along this line should be well founded and directed to the correction of abuses. In organized society some way must be provided for the settlement of controversies. This is necessary if we are to avoid the arbitrament of the sword and curb the strong in overpowering the weak. The members of society have become content to accept the decisions of courts in their controversies with their fellows, and they will remain content so long as they

have confidence in their courts. Restlessness, discontent, and anarchy, however, will result with the passing of confidence in the integrity of the courts, and stable government will totter upon its foundations. It is for this reason that high-minded citizens refrain from impetuous and ill-founded criticism of the courts. They realize that the stirring up of passion and prejudice against, and the inspiring of a lack of confidence in, the courts is an assault upon organized society. Of all the departments of government the courts are the least able to defend themselves against public attack. Society expects such strength and dignity on the part of judges and courts as will restrain them from the rough and tumble of public debate concerning their actions. The defense of the courts must be left to a fair and unbiased consideration of their own records by an intelligent public conscience. If there should be restraints upon the criticism of courts, such restraints should be moral in character, and proceed from a wide-spread and deep-seated conviction of propriety. The penalty for excessive or unjust criticism can be no more than that incurred by one who breaches any other social convention. It must proceed from the loss of respect which is accorded the offender by his fellows.

It is true that Mr. Cannon as a potential member of the bar was under restraint imposed by proprieties at least which do not rest upon the average citizen. In the first place, he took an oath to maintain the respect due to courts and judicial officers. This was the oath prescribed by the legislature to be taken by every one who should be admitted to the bar. The degree of respect due to courts and judicial officers is not easy to define. Courts have a right to compel obedience in certain cases, but it does not follow that they have a right to coerce any degree of respect. They are entitled to just such respect as the citizen sees fit to accord them. It is for those who bestow the respect, and not those upon whom it is bestowed, to set the limits of the respect to which courts are

entitled. It is entirely out of harmony with the spirit of democratic government for any creature of that government to coerce the respect of the citizen. But whatever may be the degree of that respect, Mr. Cannon took an oath to maintain the respect due to courts and judicial officers.

The legal profession throughout the years has come to a common understanding with reference to many of the proprieties which should obtain and be respected by the members of the bar. These standards of propriety generally recognized by the legal profession do not justify the reckless criticism of the courts indulged by Mr. Cannon. Here, again, however, we think the observance of these proprieties should be brought about rather by the moral influence of the bar itself than by coercion on the part of courts.

It is true that Mr. Cannon's campaign was a protest against the judgment of his suspension, and was conducted more for the purpose of a personal vindication than to promote the public welfare. A campaign of this sort is apt to lead to a perversion and distortion of facts, result in little of informative value to the voters, and constitute an appeal to prejudice and sympathy rather than to reason and justice. We take occasion at this time to express recognition of the right and good citizenship of an attorney who by his public utterances seeks to correct abuses, or what he believes to be abuses, on the part of the judiciary when he is prompted by considerations of public welfare. It is quite a different thing, however, when such a campaign is conducted by a lawyer who cares nothing about public welfare, but whose sole aim and ambition is self-vindication or glorification. We may set it down as a sound abstract proposition that the one is commendable and the other reprehensible. However, who is to say what the motives of such a campaign are? While the motives prompting the campaign of Mr. Cannon may not be difficult of definition, if courts assume to pass upon the motives of a campaign and to punish those who

prosecute such a campaign with improper motives, they will be entering upon a field where such a question will not always be so easy of decision. The result will be that all will hesitate to enter upon such a campaign because of the consequences which they may invite by reason of a misconstruction of their motives. Courts would be entering upon a dangerous field if they assumed to disbar attorneys because of criticism of courts based upon improper motives. It best conforms to the spirit of our institutions to permit every one to say what he will about courts, and leave the destiny of the courts to the good judgment of the people. They may err occasionally, but the combined sober judgment of the voters can be relied upon in the long run to protect the courts from calumny, abuse, and unfounded criticism. These considerations lead to the conclusion that Mr. Cannon cannot be refused reinstatement because of his indulgences in criticism of the courts, no matter how unfounded such criticism may have been.

The serious thing that we discover in reviewing Mr. Cannon's attitude is lack of character. That lack of character is revealed in part by his reckless and unfounded assertions concerning the courts. One of the traits which we expect to find in a lawyer is that of accuracy of statement. As one becomes seasoned in the practice of the law one gradually loses much of his natural propensity for reckless, extravagant, and unfounded declarations. He becomes more charitable in his views and fairer in his judgments. If courts rule against him he sees and appreciates the fact that such rulings are not wholly unsupported, or that they are not the result of ignorance or venality. He becomes more charitable, more just, more judicial in his contemplations.

Mr. Cannon has practiced law a sufficient length of time to lead one to expect greater exactitude in his statements and greater fidelity to the truth. Mr. Cannon possesses no little egotism, and it is apparent from his own admissions that his

conduct may be easily influenced by appeals to his vanity. He has been led into a self-appraisal to which perhaps he is not entitled by impartial judgment. This characteristic has led him into the obvious obsession that he is the victim of conspiracy on the part of corporations and insurance companies to drive him out of practice, in the consummation of which the conspirators have had the support of servile judges. He apparently blames the courts for the fact that many who he believes were more flagrant offenders than he have not suffered the punishment visited on him. It must be admitted that this attitude is not altogether strange to human nature, but, as an attorney, he should understand that many offenders escape punishment, and that courts are not charged with the responsibility of discovering the offenders. It is quite probable that many bootleggers escape punishment, but that cannot influence the court when one so charged is found guilty.

He admits in his petition that in pursuing his course of conduct he ignored the advice of his attorneys and yielded to the counsel of others apparently less qualified and less disposed to give impartial advice. This in itself betrays a weakness of character not generally commendable in attorneys at law. Having arrived at the conclusion that reinstatement cannot be refused solely upon the ground of his criticism of the courts, and that his attitude in his campaigns can only be considered in so far as it reflects his character, aside and apart from his disposition to criticise the courts, our consideration narrows down to a rather small compass. It must be conceded that he has many traits of character not commendable on the part of those who act as ministers of justice. We should give serious consideration to the question whether, as an original applicant for admission to the bar, these obvious weaknesses in Mr. Cannon's character should be overlooked. We think that under the circumstances he should not be subjected now to the same rigid

test that would be applied in the case of an original applicant. He has practiced law fourteen years. He has arrived at a time of life when it would be difficult for him to accommodate himself to any other means of livelihood. He has a family dependent upon him for support. He has suffered the penalty which the court imposed upon him for the offenses of which he was convicted. He has given assurances that he will henceforth be governed by the established ethics of the profession. His attorneys, who stand high in the regard of this court, are evidently convinced of the sincerity of his professions. The Governor, a lawyer of high ideals, in signing the act purporting to reinstate him, expressed the view that, while his conduct could not be approved, he had probably learned his lesson. The legislature, by the passage of the act purporting to restore him to practice, has at least manifested its belief in his fitness for the office. It must be that his experience has in some degree had a modifying influence upon his imperious attitude and impressed him with the necessity of obedience to constituted authority, and brought about some regeneration of character. Although the only evidence of such regeneration is to be found in his verbal assurances that he will henceforth demean himself in accordance with the ethics of the profession, we have concluded, somewhat doubtfully, we must confess, to give him another chance. We have concluded that he may be reinstated and placed in a position where he will have an opportunity to give substantial evidence of his professions, and thus justify the confidence reposed in him by his attorneys, the legislature, and the governor. Our action in this respect is accompanied by the hope that he will improve his opportunity to become an honorable and respected member of the bar.

But before he can be reinstated he must pay the judgment for costs which was assessed against him in the original case. While the act of the legislature purported to remit those

costs, this attempt was also plainly beyond the jurisdiction of the legislature as an unwarranted interference with the judgment of this court. To sustain this feature of the act, *Calkins v. State*, 21 Wis. *501, p. 508, is cited. That was a case where the state was a party to the litigation, and it was held that an act of the legislature authorizing the attorney general to enter into a stipulation to vacate and set aside the final judgment rendered in favor of the state so that a new trial might be had, was a valid enactment. That case grew out of contract rights. It was a case in which the proprietary interest of the state was involved. The court simply held it was competent for the state to consent to a new trial. While the judgment for costs in this case is to be paid into the state treasury, and in that sense the state has an interest in the proceeds, the question whether the legislature may donate them to a private individual is a question which we have not examined, although we may say we regard such power as exceedingly doubtful. *State ex rel. New Richmond v. Davidson*, 114 Wis. 563, 88 N. W. 596, 90 N. W. 1067. This judgment for costs was imposed on Mr. Cannon as a part of disciplinary punishment. It was a punishment expressly authorized by the statutes. The legislature can no more interfere with that punishment than it can interfere with any other judicial act, which, we have seen, is entirely beyond the scope of legislative power. We do not think Mr. Cannon should escape the payment of these costs. His conduct has not been such as to merit immunity from any portion of the judgment originally imposed.

By the Court.—Upon the payment of the judgment for costs rendered against Mr. Cannon in the original proceeding resulting in his suspension from practice, an order will be entered reinstating him as a member of the bar of this court.

PARK FALLS STATE BANK, Appellant, vs. FIDELITY & DEPOSIT COMPANY OF MARYLAND, Respondent.

December 7, 1931—January 12, 1932.

Insurance: Indemnity policy: Against embezzlement of employees: Schedules: Construction: Whether cumulative rather than continuing: Reformation: Evidence.

1. The original schedule attached and expressly made part of a bond indemnifying against embezzlement by employees should be considered in interpreting the agreement. p. 416.
2. Recitals in schedules subsequent to the first one could not change the meaning of the bond unless the change was agreed to by the parties, as modifications of the bond could only be effected by mutual consent. p. 416.
3. A bond indemnifying against defalcations of employees and providing for termination only by thirty days' notice by either party, by termination of employment, or discovery of loss, is construed as continuing and non-cumulative, limiting insurer's liability to the amount stated in the schedules in connection with the employee's name. p. 418.
4. A mistake of law in interpreting the effect of a bond does not in itself warrant reformation. pp. 419, 420.
5. In an action on such a bond, the evidence is *held* not to warrant reformation to accord with an alleged understanding of the parties that the bond was cumulative rather than continuing. p. 420.

APPEAL from a judgment of the circuit court for Price county: G. N. RISJORD, Circuit Judge. *Affirmed.*

Action on bond indemnifying against defalcations of employees, commenced March 26, 1930; judgment for defendant entered March 16, 1931. Plaintiff appeals.

The suit is to recover on a bond indemnifying the plaintiff against embezzlements by its employees. The plaintiff each year sent in a list of the employees it wished to be covered, with a statement of the amount of the indemnity for each one, and paid the annual premium according to the

International Parental Child Abduction

IRAN

DISCLAIMER: THE INFORMATION IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY. QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO FOREIGN COUNSEL.

Since the mid-1970's, when we first began compiling statistics on this subject, the Department of State has taken action in more than 4,200 cases where children have either been abducted from the United States or wrongfully detained in a foreign country. We have provided information in response to thousands of additional inquiries regarding child custody, visitation rights and effective abduction prevention techniques such as supervised visitation.

The Office of Overseas Citizens Services has taken an active role in almost 80 cases of children taken to or wrongfully retained in Iran. To our knowledge, the majority of these cases have not been resolved. However, in a number of cases, the left-behind parent has kept open the lines of communication, negotiated with the abducting parent, and eventually persuaded the other parent to travel out of Iran with the children.

The United States severed diplomatic and consular relations with the Government of Iran on April 7, 1980 as a result of the events surrounding the seizure of our Embassy in Tehran, Iran on November 4, 1979. In April of 1980, the United States Government formally asked the Swiss Government if it would assume diplomatic and consular representation of the United States in Iran. The Swiss agreed to perform specific consular and administrative functions on behalf of the U.S. Government.

One of their responsibilities is to provide consular services to children who have been taken by one parent to Iran without the other parent's knowledge or consent. In this regard, Swiss officials are permitted to ascertain the child's welfare, process applications for U.S. passports and to inform appropriate officials if there are allegations of child abuse. However, the Iranian government has placed strict limits on the ability of Swiss diplomats to intervene in such cases because they do not recognize the concept of dual nationality and therefore, when one parent is an Iranian citizen, consider the children involved to be Iranian citizens only.

Swiss diplomats in Iran do not have the authority to take custody of and return a child to the United States, just as foreign diplomats in the U.S. cannot remove children from this country. Such an action would be considered kidnapping under local law.

If you are concerned about a potential abduction, one of the first steps you should take is to notify the Department's Office of Legal Assistance and Citizenship Appeals. That office, which can be reached on (202) 326-6178, can block the **issuance** of a U.S. passport in your child's name upon submission of a court order giving you sole custody or prohibiting the child's departure from the U.S. without permission of the court. That office can also tell you whether your spouse has already applied for and obtained a passport for your child. However, if a passport has already been issued for the child, that office cannot revoke the passport or prevent its use.

If the child's father is an Iranian citizen, the child is considered an Iranian citizen under Iranian law and could travel abroad on an Iranian passport. There is nothing the Department of State can do to prevent

the issuance of an Iranian passport by the Iranian Interests Section of the Embassy of Algeria.

You may wish to notify the Iranian Interests Section that you would object to your child receiving a passport without your consent. At that time, you could ask whether they have already issued a passport for the child. The address and the telephone number of the Iranian Interests Section of the Embassy of Algeria are: 2209 Wisconsin Avenue, N.W., Washington D.C. 20007; (202) 965-4999. Unfortunately, it has been our experience that a parent encounters little or no difficulty obtaining travel documentation from the Interests Section for a dual U.S.-Iranian citizen child, despite the existence of a U.S. court order barring departure without the court's consent.

As you may already know, a custody decree issued by a court in the United States has no force or effect in a foreign country. When a child is abducted by a parent, the deprived parent must usually initiate legal proceedings in the foreign country to regain custody of the child or to enforce visitation rights. However, the difficulties in recovering a child from an Islamic country without the full support and consent of the father can be insurmountable.

It is the Department's understanding that in Iran, all matters concerning family law are governed by the religious courts. While you would be free to seek legal custody through the Iranian religious courts, you should be aware that Islamic courts rarely, if ever, grant custody of children to a parent who will not raise them as Muslims, does not plan to remain in Iran or has remarried. Islamic courts attach great importance to having children reside near their father so that he can visit frequently and oversee their upbringing. Even if the mother is granted custody, (**The children would still need his permission to leave the country**).

Currently, the only treaties which have any application to abductions of children from the United States are the Hague Convention on the Civil Aspects of International Child Abduction and the extradition treaties which the United States has with individual countries. Iran is not a party to the Hague Convention, and since the U.S. and Iran do not maintain diplomatic relations, there is no bilateral treaty in effect which would cover parental child abduction.

The U.S. Immigration and Naturalization Act was recently reformed by adding a Section which addressed the issue of child abduction. Under its provisions, which became effective June 1, 1991, a left-behind parent can, upon presentation of a custody decree, ask the Department of State to exclude an international child abductor from the United States. If you have further questions about this procedure or other aspects of child abduction, please contact the Office of Children's Issues at (202) 736-7000.

Return to International Parental Child Abduction Page

INTERNATIONAL PARENTAL CHILD ABDUCTION

ISLAMIC FAMILY LAW

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NOTE:

The information contained in this flyer is intended as an introduction to the basic elements of Islamic family law. It is **not** intended as a legal reference.

It is designed to make clear the basic rights and restrictions resulting from marriages sanctioned by Islamic law between Muslim and non-Muslim partners. For Americans, the most troubling of these restrictions have been:

-- the inability of wives to leave an Islamic country without permission of their husbands;-- the wives' inability to take their children from these countries without such permission; and-- the fact that fathers have ultimate custody of children.

MARRIAGE

In Islam, the act of marriage occurs with the conclusion of the marriage contract. The marriage contract itself is completed by an offer and acceptance, both of which must be made on the same occasion by two qualified parties. If a marriage has been contracted by competent persons in the presence of two witnesses and has been adequately publicized, it is complete and binding. **It requires no religious or other rites and ceremonies because in Islamic law formalities have no value insofar as contracts are concerned. Such marriages are conducted only if both parties are willing.**

MIXED MARRIAGES

With few exceptions, a Christian or Jew who marries a Muslim and resides in an Islamic country will be subject to provisions of Islamic family law in that country. In these circumstances:

-- Any children born to the wife will be considered Muslim. They will usually also be considered citizens of the father's country.

-- **The husband's permission is always needed for the children to leave an Islamic country despite the fact that the children will also have, for example, American citizenship.** Foreign immigration authorities can be expected to enforce these regulations. The ability of U.S. consular officers to aid an American woman who wishes to leave the country with her children is very limited.

-- The wife may be divorced by her husband at any time with little difficulty and without a court hearing.

-- At a certain point in age, the children will come under the custody of the father or his family.

-- In Islamic countries, the wife will need the permission of her husband to leave the country.

CHILDREN'S RIGHTS

There are three types of guardianship which are fixed for a child from the time of its birth;

-- The first is guardianship of upbringing, which is overseen by women during the age of dependence. The age at which this period of dependence terminates varies: anywhere from 7 years for a son and 9 for a daughter to 9 and 11, respectively. In the case of divorced parents, it is permissible for a daughter to remain with her mother **if the parents agree.** But such an agreement cannot be made for a son.

-- The second is the child's spiritual guardianship. The spiritual guardian may be the father or a fullblooded male relative of the father.

-- The third is guardianship over the child's property which usually is carried out by the father.

International Adoption & Child Abduction

Response to
Section 2803 of Public Law 105-277, (Foreign Affairs Reform and Restructuring Act of 1998), as amended by Section 202 of Public Law 106-113 (The Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for Fiscal years 2000 and 2001)

REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

INTRODUCTION:

As mandated by Section 2803 of Public Law 105-277, (Foreign Affairs Reform and Restructuring Act of 1998), as amended by Section 202 of Public Law 106-113 (The Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for Fiscal Years 2000 and 2001), the following is a report on compliance by signatory countries with the Hague Convention on the Civil Aspects of International Child Abduction (the Convention), done at The Hague on October 25, 1980.

As required, this report includes discussion of unresolved applications for the return of children to the United States filed through the U.S. Central Authority. It is important to note that under the Convention, return applications may also be filed either directly with the Central Authority of the state where the child is located or with the foreign court with jurisdiction to hear the return request. The left-behind parent may pursue return without involving the U.S. Central Authority. In these circumstances, the U.S. Central Authority may never know about such a request and its disposition. Thus this report cannot give a complete picture of the outcome of all Hague applications for the return of children to the United States.

It also should be noted that the U.S. Central Authority considers a Hague application to be "filed" on the date on which the application is forwarded by the U.S. Central Authority to the appropriate foreign Central Authority, rather than the date of the initial receipt of the application by the U.S. Central Authority. This is because in many cases supplementary materials must be obtained from the applicants before the application is considered complete and can be forwarded. Where this occurs, every effort is made to do so expeditiously.

With regard to the term "unresolved," the November 17, 1999 Conference Report on H.R. 3194 noted that the Department's previous Compliance Report:

> failed to provide information consistent with the intent of the Congress to have a full accounting of cases of violations of, and a listing of countries that are non-compliant with, the Convention. Specifically, the report's finding that there are only 58 cases unresolved after 18 months, which fails to mention the country involved, renders the report almost useless. While stipulating that this listing of unresolved cases does not include those cases considered closed by the U.S. government, the report fails to include the criteria by which the decision to close a case is made.

The Department takes this opportunity to clarify any confusion that may arise from the use of the word "resolved" and the Department's decision to report as "resolved" cases that are determined by the U.S. Central Authority to be "closed" as Hague cases or "inactive." As in other signatory countries, the U.S. Central Authority closes or inactivates Hague cases for a variety of reasons, including: return of child;

parental reconciliation; withdrawal of request for assistance; inability to contact the requesting parent after numerous attempts; exhaustion of all judicial remedies pursuant to the Convention; or access rights granted and enforced. In all of these cases, regardless of the outcome, no further proceedings pursuant to the Hague Convention are anticipated. Considering these cases "resolved" and closing them as Hague Convention cases is consistent with the practices of other Convention signatories.

Regrettably, the exhaustion of all judicial remedies pursuant to the Convention may result in a case which is "closed" under the terms of the Convention, but in a resolution that is unsatisfactory to the left-behind parent. The resolution of the case may or may not have been consistent with the Convention's requirements, independent of whether the left-behind parent is satisfied. Even when the Hague aspects of a case have been closed, however, the U.S. Central Authority stands ready to maintain a non-Hague case to provide assistance to the left-behind parent by facilitating access (which may be sought under or independently of the Convention), reporting on the welfare of the child, or assisting the parent to achieve a more satisfactory solution. When the foreign court decision on the Hague aspects of a case indicates a lack of understanding or consideration of the Convention's provisions, the U.S. Department of State registers its concern and dissatisfaction with the decision through the foreign Central Authority or diplomatic channels. In several recent cases, additional U.S. government interest has been manifested by the U.S. Central Authority, U.S. Ambassadors and Assistant Secretaries of State, as well as both the President and Secretary of State.

The U.S. Central Authority may open a Hague case based on a parent expressing concern about his/her child abroad, without requiring that a Hague application be filed or complete. The U.S. Central Authority will forward to other Central Authorities incomplete applications lacking critical supporting documents and inform parents that, while other Central Authorities are often unable to process the case without complete documentation, they may be able to make limited preliminary inquiries while parents are gathering the required documents. Thus, a Hague case may be "open" even if no Hague application has been "filed." This further complicates reporting efforts on compliance, since an opened case may be resolved without an application ever being filed. The Department is naturally pleased if a case can be resolved in its earliest stages, even before an actual application need be filed.

Annexed to this report is a list by country of the cases unresolved for more than 18 months, as required in the November 17, 1999, Conference Report. Information that might identify a case to the abducting parent, or to others, has been removed to protect the privacy of the child and applicant parent. Separately, in various places in the text of this report, certain illustrative cases are used to more fully address questions of compliance with the Convention. For the most part, these examples occurred outside the reporting period and are not, therefore, listed in the annex.

The November 17, 1999 Conference Report on H.R. 3194 also notes that:

> The new information that the Congress is requesting is intended to highlight the probability that an abducted, or wrongfully retained, child can be reasonably expected to be returned from a country that is a party to the Hague Convention based on its past record of compliance, and whether access to the child, either through the orders of that country's courts, or through U.S. court orders, has been enforced by the government in the past.

This report identifies specific areas and cases in which signatory countries have not met the Convention's goals or in which the Convention has not operated to achieve a satisfactory result for left-behind parents in the United States. The U.S. Department of State has taken steps in the past year to promote better information sharing and more consistent practices among signatory countries. The Department hosted in September 2000 a judicial conference that gathered judges and other high level officials from six common law countries and observers from 23 other nations to discuss how to foster

consistency in interpreting and implementing the Convention. The Department of State is also developing a more efficient and reliable means of tracking information about international parental abduction cases. This new case management tracking system will allow collection of better information and statistics on specific country performance and abduction factors. It is hoped that, as the system is perfected, future Compliance Reports under Section 2803 will contain increasingly comprehensive information.

In addition to applications for the return of children, this report also discusses applications for access to children. While the 1980 Convention did not treat in depth questions of parental access and thus is less specific about terms of access than terms of return, the Department of State recognizes the importance of children having open and meaningful access to both parents. Last month's conference devoted considerable attention to access issues. The Department will pursue access in every appropriate fora, including the upcoming March 2001 quadrennial meeting on the Hague Convention.

RESPONSE TO SECTION 2803(a):

Section 2803(a)(1) requests "the number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing."

Taking into account the above clarifications, as of July 31, 2000, there were 30 applications that remained unresolved 18 months after the date of filing with the relevant foreign Central Authority.

Section 2803 (a)(2) requests "a list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States."

The 30 applications identified above for the return of children that remain unresolved, 18 months after the date of filing, as of July 31, 2000, pertain to nine countries: Australia, Bahamas, Canada, Colombia, Mexico, Panama, Poland, Spain, and Switzerland. The extent to which these countries and others appear to present additional issues of compliance under the Hague Convention is discussed further in Sections (a)(3), (a)(4) and (a)(6), below.

In considering the question of compliance and court orders, it should be noted that, while most Hague cases involve a custody right by court order or exercise of law, a custody or other court order is not a requirement for filing a Hague application. The recognition of rights of custody and access under the law of other signatory countries is a goal of the Convention, but the Convention does not itself require enforcement of foreign custody or visitation orders by states party. The U.S. Central Authority does not, therefore (and cannot fully) record and monitor whether foreign countries recognize U.S. custody or other court orders. The Department recognizes that this information, systemically collected, could prove useful to further efforts and will undertake to do so whenever possible. When fully developed, the new case management tracking system, previously described in this report, may enable the U.S. Central Authority to provide better information in the future about wrongful retention of children in violation of United States court orders.

Section 2803 (a)(3) requests "a list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United

States."

There are many factors involved in implementing the provisions of the Convention, not least because the executive, legislative and judicial branches of each state party have important and varying roles. A country may thus perform well in some areas and poorly in others. The Department of State, building on recommendations of an inter-agency working group on international parental child abduction, has identified the elements involved in implementing the provisions of the Convention and has used these as factors for evaluating country performance. The elements are: the existence and functioning of implementing legislation, Central Authority performance, judicial performance, and enforcement of orders. "Implementing legislation" can be evaluated as to whether, after ratification of the Convention, implementing legislation has been enacted that enables the executive and judicial branches to carry out their Convention responsibilities. "Central Authority performance" involves the speed of processing applications; procedures for assisting left-behind parents in obtaining knowledgeable, affordable legal assistance; judicial education or resource programs; responsiveness to U.S. Central Authority and left-behind parent inquiries; and success in promptly locating abducted children. "Judicial performance" comprises the timeliness of first hearings and subsequent appeals and whether courts apply the Convention and its articles appropriately. "Enforcement of orders" involves the prompt enforcement of civil court orders by civil or police authorities and the existence and effectiveness of sanctions compelling compliance with orders. Specific instances of failure to enforce orders since April 1999 are addressed in section (a) (6) below.

This report identifies those countries that the Department of State has found to have demonstrated a pattern of noncompliance or that, despite a small number of cases, have such systemic problems that the Department believes a larger volume of cases would demonstrate continued noncompliance constituting a pattern. In addition, the Department recognizes that countries may demonstrate varying levels of commitment to and effort in meeting their obligations under the Convention. The Department considers that countries listed as noncompliant are not taking effective steps to address deficiencies.

As discussed further below, the Department of State considers Austria, Honduras, Mauritius, and Panama to be noncompliant using this standard, and Germany, Mexico and Sweden to be not fully compliant. The Department of State has also identified several countries of concern which, while not having demonstrated a pattern of noncompliance, have inadequately addressed some aspects of their obligations under the Hague Convention. These countries are Colombia, Poland, and Switzerland.

Noncompliant Countries

AUSTRIA: Austria was identified as noncompliant in the Department's previous Compliance Report to Congress because of delays in case processing which the Department believed reflected a lack of understanding by the Austrian judiciary of the Convention and indifference to the importance of expeditiously handling cases. This suggested the need for the Austrian Central Authority to better meet its Convention obligation under Article 7 to provide information about the Convention to the judiciary. In addition, Hague court orders were neither enforced adequately, nor were sanctions applied against an abducting parent who defied court orders. The Department's concerns about Austrian compliance continue, despite assurances that Austria's Central Authority has undertaken measures to educate the judiciary. Bilateral exchanges at high levels with the Austrian Government have produced a more forthcoming stance by the Central Authority. Whether this will produce satisfactory results remains in question. In particular, the Department clearly differs with the Austrian Government on interpretation of Article 13 of the Hague Convention, which addresses protection of the abducted child. The Department notes considerable efforts by Ambassador Hall and Secretary of State Albright to raise our concerns at the highest levels of the Austrian Government.

One particular case suggests that the previously cited problems remain systemic. In this case, Austrian courts to the highest court ordered the return of the child to the United States. The taking parent appealed the enforcement of the return order. The courts then determined that the Austrian return order should not be enforced because the delays in the case had caused the child to become settled in Austria. After the Austrian court denied the child's return to the United States, the left-behind parent sought access rights under the Hague Convention. The courts finally granted very limited access in Austria. It is not yet clear whether a new, more expansive access order will be granted and, if granted, will be effective in promoting the child's access to both parents. The Department of State notes that, at the time of the writing of this report, Austria's Minister of Justice Boehmdorfer has offered to assist the parties in this case to seek a resolution that will allow both parents to participate more fully in the life of their child. The United States is encouraged by the Minister's initiative and hopes that it will succeed.

HONDURAS: Honduras was cited as noncompliant in the previous Compliance Report to Congress. Since that time, there has been no change and the Honduran government has taken no actions with regard to applications for assistance pursuant to the Convention. Honduras acceded to the Convention on March 1, 1994. On July 1, 1996, the Honduran government notified The Hague that it had designated its Junta Nacional de Bienestar Social, now known as the Instituto Hondureno de La Ninez y la Familia, as the Central Authority for the Convention in Honduras. The Honduran executive branch, however, has never submitted the Convention to the Honduran legislature for ratification. Hague Convention records state that the Convention entered into force bilaterally between the U.S. and Honduras on June 1, 1994. The government of Honduras, however, has not submitted domestic legislation to implement the provisions of the Convention in effect between the United States and Honduras. Since June 1994, the U.S. Central Authority has attempted to deliver to Honduras four Hague return applications on which the Honduran Government has taken no action. In August 2000, the U.S. Ambassador met with the Honduran Foreign Minister and expressed his concerns about Honduras not recognizing its own accession to the Convention.

MAURITIUS: Mauritius was cited in the previous Compliance Report to Congress because it had not taken the necessary steps to properly implement the Convention. Although Mauritius passed implementing legislation in July 2000, local law still requires the President's signature and publication in the official gazette before it enters into force. In addition, this legislation does not include a provision making it applicable retroactively. Consequently, it is uncertain whether Mauritian courts will apply the law to two outstanding cases involving U.S. citizens that have not been handled in accordance with the provisions of the Convention, notwithstanding that they arose after the Convention entered into force between Mauritius and the United States. To date, Mauritian courts have ruled that the absence of implementing legislation has made the Convention inapplicable in Mauritius even though Mauritius has been a party to the Convention since 1993. The Department notes that recent elections in Mauritius may result in a change of decision-makers whose views on this issue may differ from those of the previous Administration. The Department, through its Chief of Mission, will continue to vigorously represent our views. The Department further notes the participation of an observer from the Government of Mauritius to our recent Judicial Conference and hopes such participation may also result in some possible movement forward.

There are two outstanding U.S. cases that have been presented to the Mauritian Central Authority. The Central Authority refused to accept them as Hague cases. In the first case, the Mauritian court rejected return of the child. This rejection was upheld in the appeals court, and the Privy Council refused to hear the case further. The Department and the U.S. Embassy continue to pursue this case. The government of Mauritius is holding the second U.S. case pending the outcome of the first case.

PANAMA: The U.S. has received conflicting indications from Panamanian authorities as to whether the Panamanian Government believes the Convention is or is not in force. The Convention entered into

force between the United States and Panama in 1994. Since then, nine Hague return applications have been filed by left-behind parents in the United States. In only one case was a child returned pursuant to orders under the Convention.

The Panamanian Government has not adopted implementing legislation clarifying the role of the Central Authority vis-a-vis the judicial system. Without such legislation, the Panamanian code of family justice takes precedence over the Convention. There is also an apparent lack of understanding among the Panamanian judiciary about the Convention, suggesting the need for judicial education. In January 2000, a Panamanian superior court overturned a lower court ruling of "international restitution" on the basis of appellant's arguments that included an incorrect claim the Convention was not in force between the United States and Panama at the time of the child's removal, and that cited the absence of a child custody order at the time of removal (not a prerequisite for Hague compliance).

The Department and U.S. Embassy officials have raised problems with the Convention in bilateral and other meetings with the Secretary General of the Panamanian Foreign Ministry, including the May 2000 bilateral meeting on social issues. The U.S. Embassy has engaged high level Panamanian officials in discussion on better implementation of the Convention. The Department of State is encouraged by these sessions and that the Panamanian Central Authority has begun conducting training on the Convention for family court judges. The Department of State notes that the Panamanian Central Authority has recognized that there is no linkage between Hague Convention compliance and negotiations on a bilateral child support arrangement, which Panama seeks in order to compel U.S. service members formerly stationed in Panama, as well as other U.S. citizens, to pay child support in accordance with Panamanian court decisions.

Countries That Are Not Fully Compliant

GERMANY: The President and Secretary of State have raised the issue of international parental child abduction with their German counterparts. As a result, a binational working group of experts on this issue is conducting ongoing discussions and developing a specific list of actions to take to improve the situation. German authorities have been forthcoming in sharing views and information with the United States. For instance, German authorities recently confirmed that the number of courts authorized to hear Hague Convention cases is being significantly reduced in an effort to encourage greater judicial familiarity and expertise in Hague cases. The Department of State finds these developments to be promising, but is unable to find Germany fully compliant until there is concrete progress in addressing the problems discussed below.

There has been a lack of understanding among the German judiciary about the Convention, and a reluctance in the German Central Authority to provide the judiciary with explanatory materials about effective implementation of the Convention. In a number of cases in Germany there has been an unconscionably broad use of the Convention's exceptions to return. Parents seeking return of their abducted children are sometimes asked to prove that return would not harm the child, even though the Convention places the burden of proof on the abducting parent. German courts have often used a traditional "best interests of the child" analysis to justify refusing to return children, thereby wrongly addressing those issues as if they were custody issues, while asserting that non-return is on the basis of Article 13b (grave risk of psychological or physical harm). The central point of the Convention is that it is the country of habitual residence, not the country to which the child has been abducted, that is the appropriate venue to make a judgment about the child's best interests and custody. The wishes of children as young as five years old have been given excessive consideration in German courts, despite the Convention's requirement that the child must have "attained an age and degree of maturity at which it is appropriate to take account of its views." In other cases, courts have denied the return of abducted

children because of evidence provided by individuals with an interest in the case. Left-behind parents also often have difficulty obtaining effective legal counsel to represent them in German courts.

In access proceedings under Article 21 of the Convention, some German court orders do not provide for children to have a meaningful relationship with both their parents and both their cultures. Access is often limited and conditional to a point of causing emotional stress to both parents and children. Even when access orders are issued by the courts, the systemic failure to enforce contempt of court sanctions allows abducting parents to resist enforcement of orders indefinitely.

To illustrate, in one case that is outside the reporting period, the abducting parent took the child to Germany in 1996. The left-behind parent filed for the return of the child. Shortly thereafter, the lower German court ordered the return of the child to the United States. The abducting parent appealed the decision. The German judge took testimony from an interested party at face value and reversed the return decision.

The left-behind parent then requested access rights, which were ordered by both the lower and higher courts. The abducting parent failed to comply with the orders. Finally, in May 2000, the abducting parent allowed the left-behind parent to see the child for the first time since 1996. The left-behind parent hopes to be able to see the child regularly but, without sanctions for failure to comply with court orders, the abducting parent remains able to deny access.

In another case illustrative of German attitudes, which is only partially a Hague case, a German citizen abducting parent took two children from the United States to Germany in July 1992. In August 1992, the children were placed in the custody of the German Youth Agency and subsequently placed in foster care. The German authorities did not notify the Embassy that two American citizen children were facing difficulties in Germany. The American citizen parent began to seek legal means to regain the custody of the children. In March 1995, the local German court determined that the children were to remain with the German foster parents. It further said that if the American parent were successful in establishing a close relationship with the children, they would be returned to him. In July 1995, the U.S. Embassy requested the assistance of the German Foreign Ministry in returning the children to the U.S. The American citizen parent recently filed an application for access to his children under the Hague Convention. Through the recently established German-American Bi-National Working Group, the U.S. is vigorously working to pursue the reunification of the American father and the children.

MEXICO: Mexico was listed in the previous Compliance Report to Congress as noncompliant with its responsibilities under the Convention. While systemic problems continue and a large number of cases remain unresolved, Mexico has shown impressive efforts to better meet its Convention responsibilities. Mexican and U.S. Central Authority officials have met four times to discuss better procedures for dealing with cases, resulting in better and more frequent communication and case updates. The Department of State is further encouraged by recent discussions with the Mexican Central Authority regarding plans by the Mexican foreign ministry to allocate additional resources to the program.

Twenty-five of the 34 cases listed in the previous Compliance Report have been closed, with approximately one-third resulting in the return of the children to the United States. There have been ten Hague court hearings since Fall 1999, with all children except one returned to the U.S. In one case, children were returned to the United States only six months after the abduction. In addition, there have been voluntary returns in more than 30 cases, with the existence of a pending Hague case a factor in the voluntary return decision. Once a child has been located, the taking parent must be notified of the hearing date. Mexico's new procedure of taking children into custody at that time has been very effective in ensuring that the taking parent does not go into hiding with the children.

Progress has occurred primarily in cases recently filed with the Mexican Central Authority. The six cases raised by the U.S. delegation in the Binational Commission meetings illustrate the delays in cases when the location of the child is not known and/or an *amparo* appeal (a provision of the Mexican Constitution where a claim is made that a civil right has been violated) is filed. There has been progress in one of those cases.

Mexico has no implementing legislation integrating the Convention into the Mexican legal system. This lack of a legal structure facilitating the Convention's operation is a major obstacle to the Convention's effective implementation in Mexico.

Most cases go a year or more without resolution. The Central Authority does not have law enforcement powers and must rely on federal and state police to locate children. Mexican law enforcement agencies do not consistently undertake serious efforts to locate parentally abducted children. In addition, the *amparo* has been abused by taking parents to block Hague proceedings indefinitely.

These concerns were raised at the 1999 Binational Commission (BNC) meeting, the 1999 follow-up meeting to the BNC, and the 2000 BNC meeting.

SWEDEN: Sweden was cited in the previous Compliance Report as noncompliant. Progress has been made in resolving cases and returning children and the Central Authority has been increasingly cooperative. However, the Department of State remains concerned about the commitment of Swedish authorities to act promptly to locate children and enforce return and access orders issued under the Convention. The U.S. Ambassador to Sweden met with Swedish justice officials and appeared on Swedish television to press the U.S. interest in prompt action on Hague cases. In one case, a child was located in Sweden and returned to the United States, but only after a lengthy delay and despite initial assurances by Swedish authorities that the child was not in Sweden. In another case, after a lengthy period with no progress, Swedish authorities assisted the U.S. Embassy and U.S. law enforcement in a multi-country search that resulted in a child's return to the U.S. from a third country.

One older case continues, nevertheless, to illustrate the potential for disputes over interpretation of the Hague Convention and enforcement of custody orders, which the convention does not address. The Regeringsratten, the Supreme Administrative Court in Sweden, denied a petition by an American parent for the return of a child to the United States. Return would have been required under an existing U.S. joint custody order that included a consensual agreement that the United States would remain the child's habitual residence and that a U.S. court would maintain continuing and exclusive jurisdiction to resolve all future custody issues, but that allowed the Swedish parent to take the child to Sweden for a two-year period. The Swedish parent filed a petition in a Swedish court seeking to establish sole custody of the child and refused to return the child to the parent in the United States in August 1995, as agreed to in the U.S. custody order. The U.S. parent filed a petition under the Convention with the Swedish Central Authority. Although the lower courts in Sweden ordered the child's return to the United States, the Regeringsratten found that Sweden had become the child's place of habitual residence, stating that a determination of habitual residence is a finding of fact that cannot be legally agreed upon in advance. The Department protested to the Swedish Ministry of Foreign Affairs that the failure to recognize the United States as the habitual residence was inconsistent with the goals of the Convention and with the fact that the United States was, in fact, the habitual residence when the custody dispute arose. The child has never been returned to the United States. The applicant in this case subsequently obtained a Swedish court order for unsupervised access, but enforcement of the order depends on the acquiescence of the abducting parent who as of the time of this report has not permitted access.

The lack of effective measures in the Swedish judicial system to grant and enforce access rights compounds the negative consequences for the left-behind parent of a judicial decision not to return a

child under the Convention. Swedish courts appear reluctant even to consider permitting access in the United States, in spite of the fact that judicial arrangements could be made in the United States to help ensure the return of a child to Sweden. In the absence of contempt of court sanctions, the abducting parent can, in any case, effectively disregard court ordered access.

Senior officials of the Swedish foreign ministry have visited the United States to meet with the U.S. Central Authority and members of Congress to discuss U.S. concerns on Sweden's implementation of the Convention. Despite the resolution of several long-outstanding cases, the failure to grant and enforce access rights, and the lack of effective contempt-of-court sanctions in access cases, and instances where Swedish courts refuse to honor U.S. court orders even when both parents have agreed to a U.S. venue for custody determinations, are areas for continuing concern.

Countries of Concern

COLOMBIA: Colombian courts frequently request a home study of the left-behind parent in the United States before ordering a child's return to the United States. Such inquiries go to the merits of custody and are inappropriate for consideration in the context of a Hague proceeding, and are properly left to the courts of the country of habitual residence, as per Convention Article 16. A Hague Convention case is not a child custody case but a mechanism to return a child to his or her country of habitual residence so that the courts there may decide contested custody issues. In addition, the U.S. Central Authority often has difficulty reaching the Colombian Central Authority and in receiving responses to routine inquiries.

POLAND: The Polish Central Authority is extremely cooperative and responsive in its dealings with the U.S. Central Authority. However, the U.S. Central Authority has informed the Polish Central Authority of concerns that the Polish judiciary is not fulfilling its obligations under the Convention.

Hague cases are sometimes not handled expeditiously. Unless there is a voluntary return, children normally remain in Poland during the entire appeals process, which usually takes a minimum of two years. In addition, in almost every Hague case, Polish courts require the left-behind parent to undergo psychological testing, and in many cases have also requested home studies of left-behind parents. Such inquiries go to the merits of custody and are thus inappropriate for consideration in the context of a Hague proceeding, and are properly left to the courts of the country of habitual residence, as per Convention Article 16. Enforcement of Hague decisions is also problematic, as there is no entity charged with enforcement of Hague rulings. Because these are civil matters, police will not intervene to enforce Hague orders.

SWITZERLAND: Switzerland is a federal country with powerful cantons. Authorities at the federal level, including the Swiss Central Authority, are cooperative and responsive, but there are problems with cantonal-level governments, courts and child welfare agencies, which have favored the Swiss parent in some international parental abduction cases. While federal authorities understand and take the Hague Convention seriously, there is a reluctance to intervene to enforce U.S. court orders that are in opposition to Swiss (federal or cantonal) court decisions.

In the specific case cited in section (a)(6) below, the Swiss federal court ruled that the child must be returned to the left-behind parent in the United States, and the cantonal court of original jurisdiction rejected the taking parent's appeal of this decision. When the taking parent moved to another canton and jurisdiction was transferred to the new place of residence, this new canton refused to implement the federal court order. In addition, the cantonal court recently ordered a psychological examination of the child. The examination gave considerable weight to statements made by the eight-year-old child, and concluded that return of the child would cause grave psychological harm because the child had by then

become integrated in Switzerland. The court has not yet made a ruling subsequent to the psychological examination. As a result of such delays it has been four years since filing of the Hague application for return.

The above-referenced case was raised by the Charge d'Affaires with the highest Swiss non-elected children's issues official in October 1999. The Embassy is preparing to approach cantonal authorities directly. The Embassy maintains ongoing close contacts with the Swiss Central Authority on children's issues.

Section 2803 (a)(4) requests "detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted." The information requested under this section is attached in Attachment A.

Section 2803 (a)(5) requests "information on efforts by the Department of State to encourage other countries to become signatories to the Convention." Working for greater foreign participation in multi-lateral treaties, such as the Hague Convention, is a strategic goal in the FY 1999-2000 Performance Plan of the Bureau of Consular Affairs. The Department avails itself of appropriate opportunities that arise in bilateral contacts to persuade other countries not party to the Convention of the advantages that would derive from ratification or accession. The Assistant Secretary for Consular Affairs routinely raises the Convention in talks with foreign officials on other bilateral consular matters. The Director of the Office of Children's Issues described the advantages of accession to the Convention in an address before the Consular Corps of Washington. The Department maintains a library of talking points and materials for its overseas posts to use in explaining to foreign governments the advantages of adhering to the Convention. The Department and its overseas posts have worked with the following countries in the past year to encourage accession, ratification, or passage of implementing legislation: Costa Rica, El Salvador, Ghana, Guatemala, Japan, Lithuania, Nicaragua, Panama, Peru, and Trinidad. Subsequently, Trinidad acceded to the Convention and Peru's legislature ratified the Convention.

Section 2803 (a)(6) requests "a list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors."

The reporting period is considered as the period from the date of submission of the last report on April 30, 1999 until July 30, 2000. The information provided is that available to the U.S Central Authority within these dates.

CANADA: In one case, local Tribal police refused to enforce a Provincial court order for return of a child.

GERMANY: Orders for parental access are sometimes not enforced due to a lack of effective sanctions for failure to comply with orders.

ISRAEL: Orders for return have not been enforced due to difficulty in locating the child and taking parent. In several cases, orders for return have been overturned on appeal or not executed because of provisions in the orders requiring guarantees regarding the taking parent's immigration and employment status upon return to the U.S. with the child.

SPAIN: In several cases, orders for return have not been enforced because local law enforcement officials have not been aggressive in locating the children.

SWITZERLAND: Federal court orders for return and access must be enforced by local officials. In one significant case, local officials have failed to enforce an order for return issued by the federal courts.

Section 2803 (a)(7) requests "a description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of nongovernmental organizations within their countries that assist parents seeking the return of children under the Convention." The Department of State works closely with the National Center for Missing and Exploited Children (NCMEC) through a cooperative agreement and through collaborative efforts in areas not covered by the agreement. The Department has offered to assist the International Center for Missing and Exploited Children (ICMEC) as it expands its overseas presence and work. The Department and ICMEC will continue to explore ways in which the Department can be supportive of ICMEC's work, while ensuring that the ICMEC meets its goal of preserving its identity and integrity as a nongovernmental organization.

Go to Attachment A: List of Number of Applications for the Return of Children Submitted by U.S. Citizens to the Central Authority of the United States that Remain Unresolved More Than 18 Months After the Date of Filing

Return to International Parental Child Abduction Page

ATTACHMENT "A"

LIST OF NUMBER OF APPLICATIONS FOR THE RETURN OF CHILDREN SUBMITTED BY UNITED STATES CITIZENS TO THE CENTRAL AUTHORITY FOR THE UNITED STATES THAT REMAIN UNRESOLVED MORE THAN 18 MONTHS AFTER THE DATE OF FILING.

**The following acronyms are used throughout:

CI - Office of Children's Issues
CA - Foreign Central Authority
LBP - Left-behind parent
TP - Taking parent

Please note that the case summaries below do not include records of Department of State and overseas posts' frequent, continual conversations and meetings with LBP's.

AUSTRALIA: CASE 1

Months Open: 60
Return or Access: Return
Date of abduction or wrongful retention: 12 Jan 95
Date Hague application filed: 19 Jun 95
Has child been located? Yes

Date and results of first court hearing of Hague case:

Feb 96 - Court ordered return.
Nov 96 - Australian pick-up warrant issued.

Date and results of subsequent appeals:

Jan 98 - Request to file appeal made by TP.
Feb 99 - Full court of Australian Family Court upheld return order.
Mar 99 - TP applied to full bench of Family Court for certificate allowing appeal to Australian high court.
Dec 99 - Australian high court dismissed TP's appeal against order for return.

Actions taken by the Department of State to resolve the case:

Jan 98 - CA notified CI that child located. Arrangements made to pick up child.
See above for court hearings during this time period.
Feb 98 to Aug 99 - Letters of protest to CA.
Mar 99 - Assistant Secretary of State raised case with Australian counterpart.
Sep 99 - Letter from CI Director to CA's principal legal officer.
Sep 99 to Feb 00 - Strenuous efforts to locate LBP. LBP informed several times of need to provide signed agreement to undertakings in original order for return.

Actions taken by the Chief of Mission: None

BAHAMAS: CASE 1

Months Open: 56
Return or Access: Return
Date of abduction or wrongful retention: 04 Nov 95
Date Hague application filed: 04 Dec 95
Has child been located? Yes

Actions taken by the Department of State to resolve the case:

Dec 95 - Embassy requests updates from CA; no response.
May 96 - Embassy welfare/whereabouts visit.
Sep 96 - Jul 97 Continued numerous attempts to contact CA; no response.
Jul 97 - Embassy welfare/whereabouts visit attempted. Embassy sought MFA assistance in gaining consular access.
Aug 97 - Embassy welfare/whereabouts visit.
Dec 98 to May 99 - Embassy's requests for updates from CA unanswered.
May 99 - Embassy contacted Bahamian public prosecutor's office.
Jun 99 - CI contacted U.S. law enforcement. Embassy discussed extradition for parental kidnapping charge with Bahamian Attorney General's office.
Dec 99 - CI contacted U.S. law enforcement re extradition.
Mar 00 - Conference call (CI, DOJ, LBP) to discuss extradition. Embassy contacted public Bahamian prosecutor's office.
Mar 00 - Ambassador sent diplomatic note asking for action on case.
Apr 00 - Embassy requested meeting with Deputy Attorney General to follow up on diplomatic note.
Apr 00 - Embassy reported official Ministry of Foreign Affairs/Attorney General response "to ensure that these matters are actively pursued and satisfactorily resolved."

Actions taken by the Chief of Mission: 13 Mar 00 diplomatic note requesting action with this and other long-standing case.

BAHAMAS: CASE 2

Months Open: 26
Return or Access: Return
Date of abduction or wrongful retention: 24 May 97
Date Hague application filed: 01 May 98
Has child been located? Located, but missing again in early 2000.

Date and results of first court hearing of Hague case:

Sep 99 - Supreme Court requested a report from Bahamian social services and U.S. social services. CA only notified CI of court's decision in Apr 00.

Actions taken by the State Department to resolve the case:

Nov 98 - CI sent follow-up fax asking for status.
Dec 98 - CI forwarded documents from CA to LBP for signature.
Sep 99 - When CI called LBP's attorney for update, learned case scheduled for hearing.
Oct 99 to Apr 00 - Embassy repeatedly sought information from CA on court decision; received no

answer.
Mar 00 - Ambassador sent diplomatic note asking for action on case.
APR 00 - Embassy requested meeting with Deputy Attorney General to follow up on diplomatic note.
Apr 00 - Embassy reported official Ministry of Foreign Affairs/Attorney General response "to ensure that these matters are actively pursued and satisfactorily resolved."
Jun 00 - CI requested update from Embassy. Child and TP now missing. Bahamian social services working to locate them.
Jul 00 - CI/Embassy emails, LBP to Embassy for meeting with Consul General.

Actions taken by the Chief of Mission: 13 Mar 00 diplomatic note requesting action with this and other long-standing case.

CANADA: CASE 1

Months Open: 56
Return or Access: Return
Date of abduction or wrongful retention: 20 Oct 95
Date Hague application filed: 23 Oct 95
Has child been located? Yes

Actions taken by the Department of State to resolve the case:

Dec 95 - Application sent to CA by local District Attorney.
Mar 97 - CI informed that Superior Court had ordered the children's return to the U.S. but that tribal police on Indian Reserve refused to comply with the court order.
Jul 00 - CA reported that the case had been settled and was awaiting submission of agreement to the court.

Actions taken by the Chief of Mission: None.

COLOMBIA: CASE 1

Months Open: 33
Return or Access: Return
Date of abduction or wrongful retention: 01 Sep 97
Date Hague application filed: 25 Sep 97
Has child been located? Yes
Date and results of first court hearing of Hague case:

Sep 99 - Court ordered return to U.S. Police to enforce the order should the TP not surrender child. Problem due to national strike/riots in Colombia and need for passport from Embassy without transportation within the country or outbound flights.

Dates and results of subsequent appeals:

Sep 99 - Family court magistrate suspended Hague return order, in response to TP appeal. Child to remain in Colombia and new magistrate to decide the case.

Sep 99 to Mar 00 - Series of appeals. TP's petitions for custody denied. Court suspended LBP's case for 4-5 months for a review period, as requested by TP.

Actions taken by the State Department to resolve the case:

Note: CI has been actively involved with law enforcement efforts from early on, developing strategies and sharing information.

Mar, Apr 98 - After several unsuccessful attempts to fax CA, using several fax numbers, to confirm order for home study of LBP, mailed update request. Express-mailed update request hard copy along with others to LBP.
Jul to Aug 98 - CA forwarded Article 13b home study via NCMEC. CI contacted social service organizations to help arrange home study.
Aug 98 - FedExed update letter to CA.
Sep 98 - FedExed home study and translation to Embassy for delivery to CA.
Mar 99 - Received letters from CA, stating Hague proceedings were resumed after being interrupted by the January earthquake
See above for court proceedings during this time period.

Actions taken by Chief of Mission: None.

MEXICO: CASE 1

Months open: 73
Return or access: Return.
Date of abduction or wrongful retention: 07 May 93
Date Hague application filed: 12 May 94 (faxed; originals mailed 13 May 94)
Has child been located? Yes
Date child was located (if location problematic or delayed): 07 Aug 96

Date and results of first court hearing of Hague case:

Oct 6-10, 1997 - Hearing scheduled but not held. Reason for postponement/cancellation not provided.

Actions taken by the Department of State to resolve the case:

Jul 94 - Submitted additional documentation to CA.
Nov 94 - CA requested original documents and address/location information.
Dec 94 - Notified CA that LBP was obtaining documents and address on Hague application was accurate.
Mar 95 - CA requested original documents and information on current status of divorce/custody proceedings. Requested documentation from LBP.
Jul 96 - Query to CA re status of case; no response.
Jul 96 - Welfare/whereabouts visit requested to confirm possible location of children. Embassy requested local child protective services (cps) to conduct visit.
Aug 96 - Cps reported location and well-being of children; information sent to LBP; location confirmed to CA.
Jul 97 - Query to CA re status of case; no response.
Aug 97 - Requested CA have cps do another welfare/whereabouts visit; CA requested cps visit.
Aug 97 - Provided CA information regarding children's names and TP location.
Sept 97 - Query to CA re cps visit.
Sept 97 - Requested Embassy raise issue of non-responsiveness with CA.
Oct 97 - Repeated attempts with CA to find out results of hearing; CA informed CI no hearing had taken

place.
Apr 98, Jun 98 - Query to CA re status of case; no response.
Oct 98 - CA reported that children had been located and "actions are being taken" for return to U.S.
Feb 99, Jul 99 - Query to CA re status of case; no response.
Sept 99 - Query to CA re status of case; CA needed to check with state court re status; no further response.
Jan 00 - Discussed welfare/whereabouts with LBP.
Feb 00 - Embassy requested to conduct visit and not refer it to cps; initial difficulty in locating children.
Apr 00 - Welfare/whereabouts visit conducted; reported to LBP. Relatives possibly open to returning children to U.S. without court order.
Jun 00 - Embassy requested to pursue discussions with relatives re return of children.

Actions taken by the Chief of Mission: None.

MEXICO: CASE 2

Months open: 57
Return or access: Return
Date of abduction or wrongful retention: 09 Sep 95
Date Hague application filed: 20 Sep 95
Has child been located? No

Actions taken by the Department of State to resolve the case:

Sep 95 - Hague application filed directly with CA by LBP.
Sep 95 - Memo to CA requesting immediate action to locate.
Oct 95 - Additional material from LBP forwarded to CA.
Oct 95 - CA inquired re CI policy on direct CA-LBP communication; advised there was no objection.
Nov 95 - LBP requested that Hague application be withdrawn; CA notified that application was withdrawn.
Feb 96 - Forwarded additional location information to CA, per LBP request.
Mar 96 - Query to CA re status of case; no response.
May 96 - Material from LBP forwarded to CA per LBP request.
May 96 to Jul 96 - CI notified CA re status of U.S. state court actions.
Feb 97 - LBP requested that Hague case be reinstated.
Feb 97 - CA notified re local suit; CI requested reactivation of Hague and suspension of suit. Suit suspended.
Aug 97 - CA requested to have child protective services conduct welfare check; child not located.
Aug 97 - Discussed case with FBI.
Sept 97, Oct 97, Jan 98 - Query to CA re status of case, no response.
Feb 98 - Met with CA and discussed lack of progress.
Apr 98 to Jan 99 - 7 queries to CA re status of case; no response.
Mar 99, Apr 99 - Requested CA to facilitate LBP access to child.
May 99 - Called CA to discuss case. CA does not have location information, cannot try to negotiate access.
May 99 - Assistant Secretary of State includes case in summary of problem cases presented at Binational meeting.
Jun 99 - Query to CA re status of case; provided information on possible location; no response.
Jul 99 - Embassy requested to conduct welfare/whereabouts visit.
Jul 99 - Relative met consular officials; agreed to consider asking TP re consular access.
Aug 99 - Welfare/whereabouts visit by consular officer in courthouse. Relative refused to provide direct

contact information or address.
Aug 99 - Foreign Ministry responded to case summary presented by Assistant Secretary of State, reporting that case at standstill until child located.
Sept 99 - Assistant Secretary of State discussed case with counterparts at Binational meeting.
Sept 99 to Dec 99 - Monthly attempt to contact relative for further visits/information.
Feb 00 - Contacted International Red Cross, per LBP request, to inquire re possible assistance.
Mar 00 - Discussed case with CA; attempts to locate on going; CA provided police report re unsuccessful attempts to contact family.
Mar 00 - Provided LBP with information re court structure and sample of Hague decision.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.
Jul 00 - Provided CA with new address information and clarification re LBP's parental rights.

Actions taken by the Chief of Mission: None

MEXICO: CASE 3

Months open: 55
Return or Access: Return
Date of abduction or wrongful retention: Jul 95
Date Hague application filed: 14 Nov 95
Has child been located? No

Date and results of first court hearing of Hague case:

May 96 - Court ordered return, absent appearance of TP and children at the hearing.

Date and results of subsequent appeals:

Nov 96 - Appeal filed, on Constitutional grounds, against President and Foreign Ministry (FM).
Mar 97 - Appeal denied as there were no grounds to file against defendants.
Mar 97 - Denial appeal appealed to Supreme Court.
Jun 98 - Supreme Court remanded Constitutional case to originating federal court for reconsideration due to technical errors.
Jul 98* - TP attempted to add new information/points of appeal to case in addition to technical corrections before it was sent back to Supreme Court; request denied.
Sept 98* - Appeal filed on denial of request to add information to case.

* Dates approximate; information obtained by CI in Nov 98.

If court ordered return/access, was order enforced?

May 96 - Order not enforced, as TP and children were not located.
Nov 96 - When TP and children were located, TP served with order and pick-up of children attempted; appeal filed to block return.

List of actions taken by the Department of State to resolve the case:

Nov 95 - CA requested translations and documents.
Dec 95 - Notified CA that TP being held in jail in U.S. requested expediting of case.
Dec 95 - Translations of documents sent to CA.

Jan 96 - Query to CA re status of case; no response.
Mar 96 - Query to CA re possible court date; case already sent to judge, no date.
------See above for court hearings during this time period.
Jul 96, Oct 96 - Query to CA re status; no response.
------See above for court hearings during this time period.
Dec 96 - Consulate requested to conduct welfare/whereabouts visit; could not locate children.
------See above for court hearings during this time period.
Jan 98 - Query to CA re case status; no response.
Feb 98 - Consulate requested to conduct welfare/whereabouts visit; after extensive efforts, unable to locate.
Jun 98 - Consulate requested to determine status of case in courts and to conduct welfare/whereabouts visit.
------See above for court hearings during this time period.
Jun 98 - Letter to Hague Permanent Bureau (HPB) re attempts to question constitutionality of Hague accession.
Jun 98 - HPB reported its attempts to intercede with CA.
Jul 98 - Query to CA re status of case; no response.
Jul 98 - Consulate reported all attempts to do welfare/whereabouts, including seeking assistance from state authorities, failed; family adamant that visit will not occur.
Sept 98 - Consulate began processing diplomatic note re denial of consular access (emphasis on Vienna Convention and bilateral consular convention).
Nov 98 - Diplomatic note sent to Foreign Ministry (FM).
Nov 98 - FM sent diplomatic note to CA for appropriate action; CA sent request for access to state judge.
Apr 99 - Query to CA re case status; no judicial ruling on request for access.
May 99 - Assistant Secretary of State includes case in summary of problem cases presented at Binational meeting.
Aug 99 - Foreign Ministry (FM) responded to case summaries presented by Assistant Secretary of State. Reported that case at standstill until appeal is resolved and children located. FM had concluded that it would have to sue TP in court to obtain consular access to children.
Sept 99 - Assistant Secretary of State discussed case with counterparts at Binational meeting.
Oct 99 - Requested that consulate request visit by child protective services (cps) staff since unable to obtain consular access.
Dec 99 - Called CA re status of FM suit for consular access; brief had been prepared, sent to judge.
Feb 00 - Case discussed with supervisor of CA director; discussed alternatives if suit for consular access was not successful.
Mar 00 - Consulate sent formal request to cps for visit.
Mar 00 - Requested CA supervisor to provide synopsis of where Hague case stands in court.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.
Jun 00 - Cps considers case closed due to reports that family no longer in country.

Actions taken by the Chief of Mission:

Nov 96 - Chief of Mission requested that consular officer express his direct interest in case to CA.
Nov 98 - Diplomatic note sent to Foreign Ministry requesting assistance in obtaining consular access to children.

MEXICO: CASE 4

Months open: 46
Return or access: Return

Date of abduction or wrongful retention: 18 Oct 95
Date Hague application filed: 09 Aug 96
Has child been located? No

Actions taken by the Department of State to resolve the case:

Note: Throughout case, CI has maintained contact with FBI, discussing case and developing locating strategies as appropriate.

Jul 97 - CA requested additional documents; documents sent.
Oct 97 - Query to CA re case status; no response.
Jan 98 - Query to CA re case status, especially location efforts; no response.
Mar 98 - Query to CA re status of case; provided information on possible location; no response.
Apr 98 - Requested Consulate and FBI assistance in locating.
Jul 98 - Consulate reported that attempts to locate unsuccessful.
Jul 98 - CA requested additional information to assist in location; provided all information available.
Oct 98 - CA again requested additional information to assist in locating; informed no new information existed.
Mar 00 - Discussed with LBP; agreed to keep Hague case active.
Mar 00 - Discussed case with CA; no new information re location.

Actions taken by the Chief of Mission: None

MEXICO: CASE 5

Months Open: 44
Return or Access: Return
Date of abduction or wrongful retention: 09 Jan 96
Date Hague application filed: 31 Oct 96
Has child been located? Yes

Actions taken by the State Department to resolve the case:

Aug 97 - Confirmed for CA that LBP was still interested in pursuing return case; reported to LBP that CA needed additional documents.
Sept 97 - Provided confirmed location information to CA.
Sept 97 - Reminded LBP of CA need for documents. LBP declined Embassy welfare/whereabouts visit.
Jan 98 - Query to CA re status of case; no response.
Jan 98 - Reminded LBP that CA needed documents or would close case.
Mar 98 - Notified CA that LBP was attempting to get documents; requested that case file be kept open.
Mar 98 - Sent documents to CA.
Jul 98, Sep 98, Jan 99, Apr 99 Queried CA re status of case; no response.
Jun 99 - CA fax requested "original documents."
Jun 99 - Query to CA asking specifically which documents needed; no response.
Sept 99 - Inquired again which documents needed; CA responded would inform what is needed.
Nov 99 - LBP requested welfare/whereabouts visit; Embassy requested local child protective services (cps) to conduct visit.
Jan 00 - Inquired status of welfare/whereabouts visit; very remote site, local cps still making arrangements.
Feb 00 - Sent welfare/whereabouts report to LBP.

Mar 00 - Query to CA re what documents still needed; CA responded they had no original documents, but thought they might have been sent to state court and would confirm.

Actions taken by the Chief of Mission: None.

MEXICO: CASE 6

Months open: 44
Return or access: Return
Date of abduction or wrongful retention: 26 Jun 96
Date Hague application filed: 01 Nov 96
Has child been located? No

Actions taken by the Department of State to resolve the case:

Jan 97 - Application with original signature forwarded to CA.
Mar 97 - Query to CA re case status; CA indicated case had not been received; application re-submitted.
Aug 97 - CA requested documents and translations. Embassy delivered material.
Jan 98 - Query to CA on case status. CA requested certified documents; informed CA that these documents had already been submitted.
Mar 98 - LBP notified that additional document may be needed.
Apr 98 - Query to CA on case status; no response.
Oct 98 - CA again requested certified documents, stating they had received only photocopies.
Oct 98 - Certified copy of documents requested from LBP.
Apr 99, Jun 99 - Query to CA on case status; no response.
Nov 99 - Reminded LBP of need for certified copy of documents. Requested Embassy conduct welfare/whereabouts to confirm location.
Dec 99 - Embassy reported that child protective services (cps) attempted welfare/whereabouts, but family not at location provided.
Dec 99 - Welfare/whereabouts request passed to another consular district.
Dec 99 - Discussed other possible leads re location with LBP.
Apr 00 - Requested LBP provide additional information as discussed; no response.

Actions taken by the Chief of Mission: None

MEXICO: CASE 7

Months open: 40
Return or access: Originally for return, LBP changed to access Nov 99.
Date of abduction or wrongful retention: 31 Jul 96
Date Hague application filed: 03 Mar 97
Has child been located? Yes

Date and results of first court hearing of Hague case:

Aug 97 - Hearing held. Judge stated would order return upon pick-up of children; order not signed.

Dates and results of subsequent appeals:

Aug 97 - TP filed appeal blocking pick-up and further CA action.

Oct 97 -Hearing held on appeal.
Nov 97 -Appeal denied; TP and children cannot be located.
Dec 97 - TP and children located, hearing held on return. Judge stated order for return would be issued upon pick-up of children.
Dec 97 - TP filed appeal blocking pick-up and any action from judge.

Actions taken by the Department of State to resolve the case:

Note: Throughout May 97 - Mar 99, CI worked with FBI and Embassy Legal Attaché on location and law enforcement support for LBP.

------See above for court hearings during this time period.
Aug 97 - CA informed CI that LBP could pursue directly in court. CI informed LBP of option available and need for attorney.
Sept 97 - Query to CA re status of case; no response.
Mar 98 - LBP requested visitation (in foreign country) while appeal in progress; no response.
Jun 98 - CI requested CA that, not withstanding the appeal, case be heard expeditiously as per Hague Convention.
Jun 98 - Embassy requested to conduct welfare/whereabouts visit; Embassy reported that child protective services (cps) approval required for visit.
Jul 98 - Query to CA re status of case. Requested CA ask cps to authorize consular visit; no response.
Jul 98 - Embassy attempted welfare/whereabouts visit.
Sept 98 - Query to CA re status of case; no response.
Sept 98 - Welfare/whereabouts visit conducted by Embassy at lawyer's office.
Oct 98 - Spoke with CA re status of case. CA reported that parents were willing to sign agreement re visits with conditions.
Oct 98 - LBP spoke with Embassy re Sep 98 welfare/whereabouts visit; asked Embassy to follow-up on possible access arrangements.
Nov 98 to Dec 98 - CI and Embassy facilitate delivery of LBP's holiday gifts.
Jan 99 - Called CA re case status; no response.
Jan 99 - Embassy conducted welfare/whereabouts visit at lawyer's office.
Feb 99 - Request to CA for case status update; nothing new.
Apr 99 - Embassy requested to conduct welfare/whereabouts visit in the home and convey LBP's continued interest.
May 99 - Assistant Secretary of State included case in summary of problem cases presented at Binational meeting.
May 99 - Letter requesting LBP visitation with children sent to CA by NGO; no response.
Aug 99 - Welfare/whereabouts visit conducted in attorney's office.
Aug 99 - Discussed case with LBP; confirmed LBP's goals re access rather than return.
Aug 99 - Foreign Ministry responded to case summary presented by Assistant Secretary of State, reporting that case at standstill until lawsuit and appeal are resolved.
Sept 99 - CA indicated that despite the lawsuit and appeal, it could get involved in the access case.
Sept 99 - Assistant Secretary of State discussed case with counterparts at Binational meeting.
Nov 99 - Official notification of conversion of case from return to access sent to CA.
Feb 00 - Query to CA re case status; told Director would contact with update; no contact.
Mar 00 - Query to CA re case status; legal briefs had been prepared and case had gone to judge.
Mar 00 - Contacted supervisor of CA; agreed that case ought to move forward quickly as access case; would investigate delays.
Apr 00 - CA notified CI that judge had ruled that appeal had been denied and judge now reviewing briefs.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.

Actions taken by the Chief of Mission: None

MEXICO: CASE 8

Months open: 36
Return or access: Return
Date of abduction or wrongful retention: 01 Aug 93
Date Hague application filed: 23 Jun 97
Has child been located? Yes

Actions taken by the Department of State to resolve the case:

May 97 - LBP first contacted CI; discussed case.
Jun 97 - Partially completed Hague application filed with CA .
Jul 97 - LBP notified of documents still needed .
Sept 97, Dec 97 - LBP requested to submit required documents.
Dec 97 - Query to CA re status of case; requested CA keep file open even though incomplete; no response
Feb 98, Jun 98 - Query to CA re status of case; no response.
Aug 98 - Received additional documents from LBP; translations still needed.
Sept 98 - Query to CA re status of case; no response.
Sept 98 - Received additional documents from LBP.
Oct 98 - Additional documents submitted to CA.
Nov 98 - Received translations from LBP; sent to CA.
Nov 98 - Sent new location information to CA.
Nov 98 - Query to CA re status of case; no response.
Mar 99 - Query to CA re status of case; responded with need for additional documents and translations.
Mar 99 - CA told that documents requested had already been sent, but copies were re-sent.
May 99 - Assistant Secretary of State included case in summary of problem cases presented at Binational meeting.
Aug 99 - Foreign Ministry responded to case summaries presented by Assistant Secretary of State, reporting that case at standstill until original documentation submitted.
Aug 99 - Requested CA to notify as to documents still needed; response included same list as that sent Mar 99, plus one additional document.
Aug 99 - LBP asked to provided documents as requested.
Sept 99 - Assistant Secretary of State discussed case with counterparts at Binational meeting.
Sept 99 - LBP submitted requested documentation; sent to CA.
Sept 99 - Confirmed with CA that file was complete.
Mar 00 - Query to CA re status of case; being processed by CA for submission to court.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.

Actions taken by the Chief of Mission: None

MEXICO: CASE 9

Months Open: 36
Return or Access: Return.
Date of abduction or wrongful retention: 21 Mar 97
Date Hague application filed: 23 Jun 97
Has child been located? No

Actions taken by the Department of State to resolve the case:

Jul 97 - Query to CA to verify receipt of original documents.
Aug 97 - CA responded that original documents had not been received, only copies.
Aug 97 - Documents sent to CA; notice remainder will be sent.
Oct 97 - CA requested state law on custody and translation.
Nov 97 - Sent requested material to CA.
Feb 98 - Information sent to CA re possible location.
Jan 98 - CA requested documents.
Feb 98 - Material sent; reported translation would be sent.
Mar 98 - Sent translation to CA; notified CA that this should complete all required documentation; sent additional information re possible location.
Jul 98 - Query to CA re status of case; no response.
Oct 98 - Query to CA re status of case; CA again requested translations.
Nov 98 - Sent translations to CA.
Mar 99 - CA again requested translation and clearer photograph of TP.
Apr 99 - Sent CA packet including copies of all material sent to CA from Mar 98 to Mar 99.
Nov 99 - CA requested certified copy custody order and translations.
Jan 00 - Court order received from LBP and sent to CA.
Mar 00 - Discussed case with CA; location of child not yet confirmed.

Actions taken by the Chief of Mission: None.

MEXICO: CASE 10

Months open: 32
Return or access: Return
Date of abduction or wrongful retention: 28 Feb 96
Date Hague application filed: 27 Oct 97
Has child been located? Yes

Date and results of first court hearing of Hague case:

Jun 98 - Hague hearing held. Return denied, apparently due to lack of exercise of custody rights.

Dates and results of subsequent appeals:

Jul 98 - Ruling appealed.
Feb 99 - Appeal won; court ordered remand to lower court for re-hearing because child did not have own legal representation.
Mar 99 - Appealed the remand to lower court; direct order of return of child to U.S. requested.
Feb 00 - Appeal lost; case remanded to lower court to be re-heard once child appointed separate legal representation.

Actions taken by the Department of State to resolve the case:

Aug 96 - Partial Hague application sent to CA.
Mar 97 - CA requested translation of documents.
Apr 97 - Translation of some documents sent to CA.
Jun 97 - Query to CA re status of case; provided list of documents needed to complete file.

Jul 97 - Notified LBP of documents needed.
Aug 97 - Query to CA re status of case; case had been forwarded to state court; CA requested to contact state to determine status.
Aug 97 - CA reported that court needed missing documents.
Oct 97 - Required documents sent to CA to send to court.
Jan 98 - Informed CA that LBP was going to be in country.
Mar 98 - LBP reported that state officials still needed documents sent to CA in Oct 97; re-sent documents.
------See above for court hearings during this time period.
Jul 98 - Consulate provided LBP with lawyer's list.
Sept 99 - Consulate requested to conduct welfare/whereabouts. Reports and photos sent to LBP.
Nov 99 - CI and Consulate facilitated visit by LBP with child and communication with TP.
Mar 00 - Discussed case with CA; CA requested psychological evaluation.
Apr 00 - Provided LBP with state-level contacts in law enforcement.

Actions taken by the Chief of Mission: None

MEXICO: CASE 11

Months open: 30
Return or access: Return
Date of abduction or wrongful retention: 08 May 97
Date Hague application filed: 17 Dec 97
Has child been located? Yes, but now missing.

Actions taken by the Department of State to resolve the case:

Note: CI has been actively involved with law enforcement efforts from early 1999 to date, developing strategies, and sharing information.

Jul 97 - LBP contacted CI re abduction; options discussed.
Sept 97 - Advised LBP to get Article XV determination if Hague application to be pursued.
Nov 97 - Passport hold placed.
Nov 97 - Query to foreign immigration.
Dec 97 - Hague application filed with CA, including Article XV determination.
Feb 98 - Query to CA re status of case, indicating potential flight risk of TP; no response.
Mar 98 - Forwarded information from LBP to consular agent.
Jun 98 - Foreign embassy confirmed, in response to congressional interest, that CA had sent case to appropriate court.
Jun 98 - Query to CA re status of case; no response.
Jun 98 - Request consular agent to confirm submission of case to court.
Jul 98 - Consular agent reported that case had not been sent to court; confirmed that it was still at CA.
Jul 98 - Query to CA re status of case, seeking clarification of conflicting information. CA informed CI that case had been sent to court; judicial authorities were seeking to confirm location; CA agreed to request immediate pick-up of child when located.
Jul 98 - CA requested additional documents.
Aug 98 - CA informed CI that prosecutors had agreed to hasten the processing of the case.
Aug 98 - Additional documents forwarded to CA.
Sept 98 - Queries to CA re status of case; no response.
Oct 98 - Discussed status with CA; again stated case would be dealt with as quickly as possible.
Oct 98 - CA reported that judicial police had not been able to locate.

Nov 98 - Provided CA with all location information available.
Dec 98 - Case moved to family court, accurate address determined.
Dec 98 - Officials attempted to pick-up child, family had gone.
Jan 99, Mar 99 - Query to CA re case status; no response.
May 99 - Case included in summary of problem cases presented by Assistant Secretary of State at Binational meeting.
Jul 99 - Query to CA re case status; child not located.
Aug 99 - Foreign Ministry responded to case summaries presented Assistant Secretary of State; reported that case at standstill until child is located.
Sept 99 - Case discussed by Assistant Secretary of State with counterparts at Binational meeting.
Mar 00 - Discussed case with CA; no progress in locating despite efforts of federal and judicial police.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.

Actions taken by the Chief of Mission: None

MEXICO: CASE 12

Months open: 29
Return or access: return
Date of abduction or wrongful retention: 02 Dec 97
Date Hague application filed: 31 Jan 98
Has child been located? No

Actions taken by the Department of State to resolve the case:

Jan 98 - Information re options provided to LBP.
Jan 98 - Hague application filed with CA by county District Attorney's office.
Mar 98 - Spoke with DA's office re case; DA's office told by CA that case had gone to judge.
Apr 98 - Query to CA re case status and whether it has been sent to court; no response.
May 98 - CA notified that scheduled pick-up order for child did not occur; requested translations; request forwarded to DA's office.
Jun 98 - CA notified DA's office child not at stated address.
Aug 98 - Query to CA re case status of case; no response.
Sept 98 - Discussed case with CA; alternative address provided.
Oct 98 - CI notified by CA police attempting to locate child.
Nov 98 - Notified CA likely location of TP and child on specific day.
Jan 99 - Query to CA re case status of case; no response.
May 99 - Assistant Secretary of State included case in summary of problem cases presented at Binational meeting.
Aug 99 - Foreign Ministry responded to case summaries presented by Assistant Secretary of State, reporting that case at standstill until original documentation submitted.
Aug 99 - Met with LBP to discuss status of case; what can be done to pressure re locating.
Sept 99 - CA requested to conduct after hours search at possible address; agreed to do so.
Sept 99 - Assistant Secretary of State discussed case with counterparts at Binational meeting.
Oct 99 - CA reported unable to locate child.
Nov 99 - Discussion with CA re location efforts.
Dec 99 - CA reported unable to locate child.
Jun 00 - Case again raised by Assistant Secretary of State at Binational meeting.

Actions taken by the Chief of Mission: None

MEXICO: CASE 13

Months open: 28
Return or access: Return
Date of abduction or wrongful retention: 11 Jan 98
Date Hague application filed: 24 Feb 98
Has child been located? No

Date and results of first court hearing of Hague case:

Apr 98 - Judge ordered federal police to locate.

Date and results of subsequent appeals:

May 98 - Judge ordered judicial police to assist in location efforts.
Jul 98 - TP notified re Hague application and pending hearing.
Jul 98 - TP filed appeal blocking actions of CA.

Actions taken by the Department of State to resolve the case:

Note: Throughout Feb 98 - Oct 98, CI worked with local police, FBI and Embassy Legal Attaché.

Feb 98 - Contacted by congressional office re abduction; information sent to LBP.
Feb 98 - Discussed case with local police and FBI re filing criminal charges.
Mar 98 - Foreign embassy called CI re case; foreign embassy responding to U.S. congressional interest.
Mar 98 - CA sent case to judge.
Apr 98 - CI notified by CA that TP and child not at address.
Jun 98 - Discussed case with Hague Permanent Bureau representative re LBP complaint. Permanent Bureau asked CA for assurance that case was being handled in accordance with Hague procedures.
Jun 98 - CI sent CA new information on possible location of child.
Jul 98 - Consulate requested to attempt welfare/whereabouts.
Jul 98 - Query re case status sent to CA; no response.
Aug 98 - Law enforcement reported child may have been located, informed CA; also reports that TP filed some "papers"; query to CA re papers filed and case status.
Sept 98 - Query to CA re case status; no response.
Oct 98 - Discussed case with CA; told of above court sequence for first time.
Oct 98 - CA notified CI of inability to locate child; CI sent query as to how that is possible with recent judicial action by TP.
Nov 98 - LBP asked Embassy to request welfare/whereabouts visit.
Mar 99 - Welfare/whereabouts visit refused by relative.
Jan 99 - Called CA for case status report; no answer.
May 99 - Called CA to discuss case.
May 99 - Case included in summary of problem cases presented by Assistant Secretary of State at Binational meeting.
Jun 99 - Forwarded updated location information to CA.
Aug 99 - Foreign Ministry responded to case summaries presented by Assistant Secretary of State; reported that case at standstill until appeal is resolved.
Sept 99 - Case discussed by Assistant Secretary of State with counterparts at Binational meeting.
Feb 00 - Updated location information passed to CA. LBP declined attempt at welfare/whereabouts.
Mar 00 - Discussed case with supervisor of CA director.

Jun 00 - Case again raised by Assistant Secretary of Binational meeting.

Actions taken by the Chief of Mission: None

MEXICO: CASE 14

Months open: 24
Return or access: Return
Date of abduction or wrongful retention: 09 Feb 97
Date Hague application filed: 28 Jun 98
Has child been located? No

Actions taken by the Department of State to resolve the case:

Jun 97 - Received Hague application, without supporting documents, from county District Attorney (DA)'s office.
Jul 97, Sept 97, Apr 98 - Contacted DA re additional documents needed.
Jun 98 - Received complete application; filed with CA.
Jul 99 - Confirmed with DA's office that no new information re location or case status was available.
Nov 99 - Provided CA new information re aliases and additional information re possible location.
Mar 00 - Query to CA re status of case; location still unconfirmed.

Actions taken by the Chief of Mission: None

MEXICO: CASE 15

Months open: 23
Return or access: Return
Date of abduction or wrongful retention: 23 May 98
Date Hague application filed: 13 Jul 98
Has child been located? Yes

Actions taken by the Department of State to resolve the case:

Jul 98 - Filed Hague application (submitted by county District Attorney's office) with CA.
Jul 98 - Provided CA new location information from LBP.
Oct 98 - Query to CA re status of case; no response.
Jan 99 - Case submitted to court. Court requested notarized copies of documents from DA's office; submitted.
Feb 99 - Court asked DA's office for proof of signature of foreign authority that had signed Hague treaty.
Mar 99 - Protested to CA re Jan and Feb requests from court as being outside scope of Hague requirements; requested CA inform judge as to appropriate procedures. No response.
Jul 99, Sept 99 - Query to CA re status of case; no response.
Mar 00 - Query to CA re status of case. Case with judge; no progress noted.

Actions taken by the Chief of Mission: None

MEXICO: CASE 16

Months open: 23
Return or access: Return
Date of abduction or wrongful retention: 01 Aug 96
Date Hague application filed: 30 Jul 98
Has child been located? No

Actions taken by the Department of State to resolve the case:

May 98 - CI provided information to LBP on options available, including possible problems with Hague application
Jul 98 - Hague application filed with CA.
Nov 98 - CA requested additional documents.
Jan 99 - Documents sent to CA. Case status update requested; no response.
Apr 99, Jul 99 - Query to CA re status of case; no response.
Sept 99 - Discussed case with CA; unable to locate.
Oct 99 - Request from LBP for welfare/whereabouts visit sent to Consulate.
Nov 99 - Consulate attempted welfare/whereabouts visit based on information from LBP; unable to locate.
Jan 00 - Consulate attempts to locate unsuccessful.
Mar 00 - Discussed case with CA; child not located.
Apr 00, Jun 00, Jul 00 - Consulate attempts to locate unsuccessful.

Actions taken by the Chief of Mission: None

MEXICO: CASE 17

Months open: 22
Return or access: Return
Date of abduction or wrongful retention 07 Mar 97
Date Hague application filed: 03 Aug 98
Has child been located? No

Actions taken by the Department of State to resolve the case:

Dec 98 - Query to CA re status of case; no response.
Mar 99 - CA requested additional documents.
Apr 99 - Sent requested material to CA.
Jun 99 - Query to CA re status of case; no response.
Jul 99 - CA requested certified copies and translations.
Aug 99 - Informed CA documents had been requested from LBP; sent interim copies.
Oct 99 - Query to CA re status of case; child not located.
Dec 99 - Referred LBP to law enforcement.
Mar 00 - Query to CA re status of case; child not located.
Apr 00 - Reminded LBP of need for certified documents to complete file.

Actions taken by the Chief of Mission: None

MEXICO: CASE 18

Months open: 20

Return or access: Return
Date of abduction or wrongful retention: 02 Feb 97
Date Hague application filed:) 28 Oct 98
Has child been located: No

Date and results of first court hearing of Hague case:

Apr 99 - Hearing scheduled; per LBP request, postponed until May 99.
Jun 99 - No decision made. TP did not appear in court with child due to problem with pick-up of child prior to hearing.

Date and results of subsequent appeals:

Aug 99 - TP filed appeal against further court action; CA and CI not notified by judge until Feb 00.

Actions taken by the Department of State to resolve the case:

Aug 98 - LBP contacted Consulate re conducting a welfare/whereabouts visit.
Oct 98 - LBP filed Hague application with CA via state District Attorney (DA) 's office.
Jan 99 - Served as liaison between LBP and DA's office.
Jan 99 - Assisted LBP in arranging visitation with TP; monitored first visit; TP agreed to weekly visitation.
Feb 99 - Consulate and LBP discussed alternative court methods to proceed with case.
Mar 99 - Discussed with DA ways to move case forward.
Mar 99 - CA informed CI that case had been sent to state court; LBP notified.
Mar 99 - Per LBP, TP cut off visitation; discussed alternative.
Apr 99 - CA notified CI hearing to be held 4/99; LBP notified.
------See above for sequence of court hearings during this time period.
Jul 99 - Query to CA re status of case; no response.
Jul 99 - Query to CA for clarification of issues raised in hearing (pick-up of children and qualifications of judge); no response.
Oct 99 - Query to CA re status; child not located. Asked re issues raised in Jul faxes; CA discussed pick-up order problem with judge.
Feb 00 - CA notified DA's office that appeal was filed against the case in Aug 99; judge just notified CA.
Mar 00 - Discussed appeal with DA's office.
Jul 00 - Agreed to LBP's request re welfare/whereabouts visit by Embassy.

Actions taken by the Chief of Mission: None

PANAMA: CASE 1

Months Open: 22
Return or Access: Return
Date of abduction or wrongful retention: 14 Aug 98
Date Hague application filed: 31 Aug 98
Has child been located? Yes

Date and results of first court hearing of Hague case:

Nov 98 - Hearing scheduled. Postponed until Jan 99 because court did not obtain a translator.

Date and results of subsequent appeals:

Apr 99 - Lower court ordered child's return to U.S.
Apr 99 - Government ministry, former employer of TP, appealed decision on behalf of TP.
Jan 00 - Superior court overruled the lower court decision, denying the return.

Actions taken by the Department of State to resolve the case:

Nov 98 - CA notified CI of 11/27 hearing date.
Jan 99 - Asked CA for results of the hearing.
------See above for court hearings during this time period.
Feb 00 - Embassy and LBP met with CA.
Feb 00 to present - Embassy continued to express concerns about case with Ministry of Foreign Affairs.

Actions taken by the Chief of Mission: None

POLAND: CASE 1

Months open: 20
Return or access: return
Date of abduction or wrongful retention: 28 Aug 98
Date Hague application filed: 01 Oct 98
Has child been located? Yes

Date of and results of first court hearing of Hague case:

Jan 99 - Hearing scheduled January 6. Postponed to January 29. Postponed to March 1 pending psychological examination of both parents.
Mar 99 - March 1 hearing postponed to March 24 because LBP not available for psychological exam.
Mar 99 - Court denied return.

Date and results of subsequent appeals:

Jun 99 - Lower court decision repealed; court must re-examine case.
Sep 99 - Hearing scheduled. Postponed to Nov 99 pending psychological exam of LBP
Jan 00 - At hearing, both parents agreed to suspend Hague proceedings pending negotiations. One child returned to U.S. with LBP.

Actions taken by the Department of State to resolve the case:

Oct 98 to Jan 00 - Many faxes to CA urging expeditious scheduling. Obtained information for LBP on enforcing negotiated settlement in Poland. Urged LBP to comply with Poland's requirement for obtaining Polish passport for child, allowing child's exit.

Actions taken by the Chief of Mission: None.

POLAND: CASE 2

Months Open: 18
Return or Access: Return
Date of abduction or wrongful retention: 24 Aug 98
Date Hague application filed: 15 Jan 99
Has child been located? Yes

Date and results of first court hearing of Hague case:

Mar 99, Jun 99 - Application for return denied.

Dates and results of subsequent appeals:

(Date unknown) - Appeal filed.
Oct 99 - Appeals hearing scheduled.
Jan 00 - CA notified CI that appeals court upheld lower court denial of return.

Actions taken by the Department of State to resolve the case:

Jul, Aug, Sept 99 - Faxes CA, calling their attention to error in Polish translation of the Convention. No response.
Oct 99 - Called the error in translation to the attention of the Hague Permanent Bureau.
April 00 - Asked LBP if appeal would be filed with Supreme Court; no response.
Nov 99 - CA acknowledges error in translation and initiates correction.

Actions taken by Chief of Mission: None.

SPAIN: CASE 1

Months Open: 60
Return or Access: Return
Date of abduction or wrongful retention: 01 Mar 95
Date Hague application filed: 12 Jun 95
Has child been located? Yes

Date and results of first court hearing of Hague case:

Feb 96 - Lower court ordered return.

Date and results of subsequent appeals:

Jun 96 - Appeals court upheld decision for return made by lower court.
Jul 99 - TP's most recent motion to vacate judgement rejected. Order to return has not been enforced.

Actions taken by the Department of State to resolve the case:

Jun 95 to Jul 99 - Requested status update from CA on efforts to locate child. CI and Embassy provided information regarding whereabouts, in order for pick up to be accomplished per court's order.

Actions taken by the Chief of Mission: None.

SPAIN: CASE 2

Months Open: 50
Return or Access: Originally application for return. Request by LBP directly to CA to convert to application for access in Jun 99.
Date of abduction or wrongful retention: 21 Nov 95
Date Hague application filed: 05 Apr 96
Has child been located? Yes

Date and results of first court hearing of Hague case:

Sep 97 - CI notified by CA that lower court denied return.

Date and results of subsequent appeals:

Jul 99 - Appeals court upheld lower court decision.

Actions taken by the Department of State to resolve the case:

Mar 97 - LBP submitted Spanish translations of documents.
Jun 99 - After application for return was denied, LBP contacted CA to request application be converted to application for access. CA requested formal application accompanied by access proposal.
Jun 00 - Application received by CI and forwarded to CA.

SWITZERLAND: CASE 1

Months open: 45
Return or Access: Return
Date of abduction or wrongful retention: Sep 96
Date Hague application filed: 01 Oct 96
Has child been located? Yes.

Date and results of first court hearing of Hague case:

Jul 97 - Court ordered return to U.S.

Date and results of subsequent appeals:

Jul 97 to present - Numerous appeals and decisions in federal and cantonal courts. No resolution.

List of actions taken by the Department of State to resolve the case:

May 97 - Sent status check request to CA.
Jul 97 - Faxed inquiry to CA, asking whether TP aware of return order. CA responded TP's attorney of town but will check when attorney returns.
Aug 97 - CA provided TP's response to LBP concerns. CA reported TP lost appeal; return order valid.
Aug 97 - CI forwarded to CA LBP's questions about picking up child.
Sep 97 - CA requested information on a U.S. court proceeding
Sep 97 - CA faxed status report; working with local law enforcement on return.
Oct 97 - CA reported LBP pick up unsuccessful.

Oct 97 - CA reported LBP's attorney working with local law enforcement. CA also spoke to local officials about Hague and custody issues. CA requested information re post-return situation in U.S.
Jul, Aug 98 - Requested updates. CA responded appeal pending, therefore no execution of order.
Oct 98 - Fax to CA requesting update.
Oct 98 - Received fax from CA advising that Supreme Court rejected TP's appeal and decided in LBP's favor. Question now is enforcement.
Nov 98 - Faxed CA asking for update on progress and timing of enforcement.
Nov 98 - CA faxed status report; LBP motion to declare return decree. enforceable and order measures to enforce will be filed in local court.
Dec 98 - CI requested information from CA about obstacles to judicial action.
Dec 98 - CA reported case settled but arrangements are needed to ensure the child's safe return. Concerned whether LBP would travel to pick up child.
Jan 99 - CI conveyed LBP's concerns about traveling again.
Feb 99 - Faxed CA asking about LBP's travel. Also inquired whether judge in enforcement case had withdrawn because of conflict of interest.
Mar 99 - Jurisdiction transferred to different court.
Jun 99 - CI requests update on enforcement of return order. CA responds.
Aug 99 - CI requests update.
Sep 99 - CA informs CI that court ordered child's examination by psychiatrist.
Sep 99 to Jul 00 - CA and CI communicate; no change in case status.
Jul 00 - Court receives expert opinion that child not be returned to U.S.

Actions taken by Chief of Mission: In October 1999, Charge d'Affaires raised case in meeting with highest non-elected children's issues official.

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