

Introduction to Cross Border Family Mediation: Promoting the New Standards of “Best Practice”

By

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Certified Virginia Supreme Court Family Mediator,
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And
Author “Recovery of Internationally Abducted Children” 1997

Abstract

International Parental Kidnapping has become a global ill. About 1,000 children are taken from the United States each year. The effects on the child have been described as abuse. Children can suffer from a variety of attachment disorders. While research conducted by the American Bar Association, Center on Children and the Law resulted in findings that these cases were not appropriate for traditional mediation, efforts to understand the dynamics of these high conflict families has resulted in a mediation approach that is reportedly finding success.

The Hague Permanent Bureau has undertaken feasibility studies on the treatment of cross-border mediation in family matters as an extension of The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. It is under the umbrella of this treaty that Cross border family mediation has developed into a specific practice that is governed by a set of professional standards developed to provide international uniformity. This paper serves as a brief introduction into “Best Practices” and considerations of cross border family mediation.

Introduction

There is a direct correlation between the continued increase in the incidence of international child abduction and the increase in bicultural marriages. Nearly 1 in 7 new marriages in the USA were bicultural in 2010 (Chen). Research reports that 61.8% of international child abductions from the USA were committed in families where each parent held citizenship in another country. 16.5% held dual citizenship (Chiancone and Girdner). The level of conflict in bicultural marriages may place the couple at greater risk for domestic violence (Chin). Today, immigration to the US is at its highest level since the early 20th century. The incidence of international parental kidnapping continues to increase annually in the United States as well as in other countries. Bi-cultural families appear to experience international abduction at a much greater rate than others.

Bi-cultural marriages present complex family dynamics when parents differ on child-rearing notions. The rate of divorce in bicultural marriages is higher than in mono-cultural marriages, and the rate of bi-cultural marriages continues to grow (Donovan). In cases of international parental kidnapping, the majority occurred in families with parents from two different countries, with the abducting parent returning to his country of origin with the child after marital break-up (Johnston, Sagatun-Edwards, Blomquist and Girdner). The greater the difference in parental cultures- the greater the risk for a child to be abducted (Dabbagh).

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When parents dispute over which country their child will be raised in, the court, in accordance with the Hague Child Abduction Treaty, makes the decision. Litigation can be costly, time consuming, and does not allow the parents to craft agreements that would be best for their family. As an extension of the treaty, cross border mediation has been developed.

“Many transnational marriages work but the majority fail, and when children are involved, it is tragic...Cultural clashes peak as each parent begins to instill in his or her children loyalty for his or her culture and religion. It is the children who are victimized...Cross-cultural marriages are not advisable...The children of broken transnational marriages may be more predisposed to aggression, poor concentration, depression and low academic achievement in spite of intelligence...[Parental abduction] is the most traumatic experience a child may have in his or her life. Parentally abducted children usually suffer post-traumatic stress disorder-nightmares, insomnia, tremors, complete absence of trust –and are more prone to obsessive compulsive disorder, which turns them into hesitant, frightened, identity-less characters for life” (Shahine).

Approximately 100,000 children from the United States are wrongfully removed or retained across international borders by a parent or family member each year (Martin). This global ill reached such proportions that an international treaty was drafted in an effort to provide relief. The United States as well as nearly 100 other countries have ratified this treaty. This treaty is known as the Hague Convention of 25 October 1980 on the Civil Aspects on International Child Abduction. The 1980 Hague Child Abduction Convention defines a judicial process by which a decision regarding the child’s home state could be made through a litigation process for the purpose of returning a child that has been wrongfully removed or retained. The court, in accordance with the 1996 Hague Child Protection Convention and other relevant instruments supporting that principle, is in the

State of the child's habitual residence. The treaty is not designed to determine custody, visitation, or relocation issues.

The United States put the Hague child abduction treaty in force in 1988 through legislation. The International Child Abduction Remedies Act (ICARA) establishes procedures to implement the Hague Convention on the Civil Aspects of International Child Abduction in the United States. This litigation process can be extremely costly with attorneys charging tens of thousands of dollars. While the treaty is designed to expeditiously return children, many cases go on past a year. During this period of time, children are often denied contact to their left-behind parent. Beyond civil litigation, some countries have criminalized international parental kidnapping.

International Parental Kidnapping Act criminalizes international parental kidnapping on a federal level in the United States. International Parental Kidnapping is a crime in the United States as well as many other countries. High conflict families may find that their child custody dispute has entered into the criminal arena, making resolution increasingly complex. A wide variety of law enforcement agencies and mechanisms may become involved such as FBI, INTERPOL, and The U.S. Department of State. Parents have been arrested and extradited for international parental kidnapping. The child suffers when a parent is placed into the custody of law enforcement. The child may feel it is their fault or that they are responsible for a parent being arrested. Children do not typically see their parent as a bad person or a criminal. This can have an adverse effect on the child's relationship with the legal custodial parent that utilized aggressive criminal action against the other parent. Mediation allows high conflict parents to address their child custody concerns and an opportunity to lower conflict and begin building a relationship based on parental cooperation.

Cross border mediation allows parents to address issues affecting their parental responsibility, including custody, visitation, and even child support arrangements. This is particularly advantageous when the parties are crafting international visitation as the cost of travel can be considered in their agreement. One of the most common approaches used to promote mediation over litigation is cost savings. The U.S. Department of State, Office of Children's Issues promotes cost savings as one of the possible benefits of mediating in international child custody disputes. Litigation costs across international borders may include international travel expenses, cost of translating documents, legal fees, and international delivery service costs- for example. Many families experiencing family break up may also find themselves at economic and financially stressful situations due to divorce and/or maintaining two households (Mediation; Child Abduction).

Cross Border Family Mediation is designed to allow the parties in dispute to craft agreements that can be filed for enforcement in multiple jurisdictions – specifically in multiple countries. While mediators cannot provide legal advice, they must understand the nature of the legal framework in which the party’s crafted agreements are intended to be filed to ensure enforcement. Different legal systems may provide advantages to one parent based on nationality, gender, religion etc., while another court may prove bias against a parent for the same reasons. Mediation can provide advantages to parties concerned with such issues should they litigate in an unfavorable forum.

“In view of the particular nature of mediation in international child abduction cases, only experienced family mediator preferably having received specific training for international family mediation and, more specifically, mediation in international child abduction cases should conduct mediation in such cases (Mediation).

Professional Standards

The Hague Conference on Private International Law, the world organization for cross border cooperation in civil and commercial matters, Child Abduction Section, created a Working Party within the context of the “Malta Process” and developed a Guide to Good Practice for mediating child custody disputes across international borders. Professional standards for mediators providing cross border mediation include (Mediation):

- Confidentiality
- Neutrality
- Do Not Give legal Advice
- Successfully Completed an approved cross border mediation program
- Cultural Competency
- Legal Competency
- Get informed consent of parties to mediate (Agreement/contract to Mediate)
- Mediators Do not represent either party
- Voluntary

Mediators support the mediation process by explaining the specific rules of mediation. These include:

- Terms of the mediation
- Explains the mediator’s role
- Defines Confidentiality

- Parties Rights to have Legal representation
- Should be conducted prior to any scheduled court hearings

Families separated by international borders resent unique needs and challenges in trying to craft agreements that allow the child to have access to both parents. Issues parents may wish to consider during mediation is International Travel for a child exercising visitation abroad. Considerations include:

- Child's Age
- Each parent's residential location
- Foreign Entry Requirements (visa)
- Health considerations
- Safety considerations
- Financial considerations
- School schedules
- Dual nationality issues for child
- Passport Issues (who has passports, are there passport blocks, is there more than one nationality of child?)

Culture and Traditions

Immigrants do not typically abandon their intimate cultural practices just because they have moved to a different location. Traditions associated with marriage, parenting, coming-of-age, and religion are usually deep rooted. Cultural traditions and practices that may have been central to the parents' disputes when they were together usually continue after they have separated. The cross border mediator should understand a wide range of intimate cultural practices. A mediator cannot assist parents to craft an agreement that supports illegal practices. The mediator cannot assist in crafting any agreement that is violation of the law. Some practices or traditions that may arise during mediation may include:

- Breast Ironing
- Gavage
- Female Circumcision
- Arranged marriage
- Honor Killing
- Underage Marriage
- Family bed
- Withholding medical care for the child due to religious beliefs

Safety

A cross border family mediator may agree to travel abroad in order to provide services to a family in crisis, specifically if a parent has wrongfully taken a child for the purpose of withholding the child from the other parent. Safety and security issues related to international family mediation may include environmental threats, and/or interaction with individuals with violent histories. Environmental threats may include civil unrest, war, natural disaster, or disease epidemic. Safety considerations include possible threats and dangers to those participating in the mediation by a participant. Cases with histories of violence, mental illness, and substance abuse may not be appropriate to mediate. Often mediators are not taught or aware of the danger to themselves or the families they serve. Family Courts have armed security. Police officers responding to domestic disturbance calls often wear bullet proof vests. Mediators go to work with a smile. Cases should be reviewed for appropriateness for mediation.

Conclusion

This paper serves to introduce the professional guidelines established for mediators working with cross border family disputes, as well as a brief look at intimate cultural practices and safety issues. As an introduction to this specialized form of mediation that is overseen by Central Points of Contact in participating countries, it serves to share the quickly evolving specialties of mediation and the professional standards that have been put into place. Professional oversight, specialized training, and international standards serve to improve service delivery and allow the family mediator to further their work in an area that is increasingly gaining attention.

Central Point of Contact

Cross border family mediation is still in its infancy. Central Point of Contacts has been established in countries participating in cross border mediation as an extension of the Hague child abduction treaty. In the United States the Central Point of Contact is:

Beth H. Cooper
Branch Chief, Incoming Abductions
Office of Children's Issues
U.S. Central Authority for the Hague Abduction Convention
U.S. Department of State
202-663-2928
cooperbh@state.gov

Bibliography

- Chen, Stephanie. "Interracial marriages at an All Time High, Study Says." CNN , 4 June 2010. <http://articles.cnn/2010-06-04/living/pew.international.marriage_1_interracial-marriages-millennial-generation-race-and-ethnicity-matter?_s=PM;LIVING>.
- Chiancone, Janet, and Linda Girdner. Issues in Resolving Cases of International Child Abduction. Washington, D.C.: American Bar Association, Center on Children and the Law, 1998.
- Chin, Ko-li. "Out-of-Town-Brides: International Marriage and Wife Abuse Among Chinese Immigrants." *Journal of Comparative Family Studies* (1994): 25, 53-70.
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- Johnston, Janet R., et al. "Early Identification of Risk Factors for Parental Abduction." *Juvenile Justice Bulletin*, March 2001. <<http://www.ncjrs.gov/pdffiles1/ojdp/185026.pdf>>.
- Martin, Maggie. "Reinventing Adolescence: New Rules for the Changing Family." *Annals of the American Psychological Association*, 22 June 2004. <<http://www.highbeam.com/library/doc3.asp?docid=1G1:119114082>>.
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- Mediation; Child Abduction. Office of Children's Issues. Bureau of Consular Affairs, U.S. Department of State, Washington D.C. http://travel.state.gov/abduction/solutions/mediation/mediation_3853.html
- Shahine, Gihan. "Fighting for Ali." *Al-Ahram Weekly Online*, 25-31 December 2003.

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Specializing in the area of International Parental Child Abduction prevention and remedies. Provide Strategic support and analysis into the various global intersections in which the practice of human smuggling/trafficking are integrated into legal platforms. I have been involved in the locating and repatriating operations involving individuals wrongfully removed/held across borders.

Providing expert professional services to government, NGO, and private sector professionals in training, strategy, research, curriculum development, investigation, and resolutions. Bringing more than 20 years of experience working around the world, within culturally immersed environment to bring peaceful solutions. Experienced in curriculum development, published author, trainer, EMT, Peace Building, Mediation/ADR, Expert testimony, risk assessments and more.

My education and experience within this area includes an intimate understanding of passport, visa, nationality and citizenship issues including multinational citizenship. Issues of fraudulent practices within immigration issues include green card marriages, use/creation/ acquisition of fraudulent documentation, brooder documents (I.D. theft) also used in "legal" acquisition of new identification for the intent to cross international borders for illegal purposes.

I have a keen working understanding of the law as it relates to the area in which I am required to work including: professional responsibilities, international treaty enforcement mechanisms, working within a multicultural context and crafting agreements in a manner acceptable to multiple legal frameworks.

I am internationally accredited in high conflict dispute resolution concentrating in the area of persons wrongfully held or retained across international borders and in peace building with two decades of experience working in abroad. I have provided forensic risk assessments since 1997 and have been recognized as a Daubert qualified expert witness in dozens of states. (Shady v. Shady)
20+ years in the area of international (cross cultural) child custody disputes, specializing in international child abduction prevention and remedies. Within that area I have provided specialized services ranging from creating training curriculums approved by the VA Supreme Court for continuing education for Judges, Lawyers, and mediators to training, case analysis, risk assessments, prevention & remedy. I have been involved in more than 1,500 cases. Author of two books. "Recovery of Internationally Abducted Children" (1997) and "Parental Kidnapping in America (2011 McFarland & Co., Inc.).

. Specializing in the wrongful removal and retention of persons across international borders.

. Mediation, State/Court Certified Parent Educator/ Trainer/ Author

. VA Supreme Court Certified Family Mediator specializing in Cross Border Family Disputes. Trained in Advanced cross border mediation (with an emphasis on The Hague) at the University of Miami, School of Law. Internationally accredited through IMI

2009-2011 Co-Director at Accord Global www.accord-global.com. Family mediation within a multicultural context in the framework of the Hague convention on the civil aspects of international child abduction with Morna Ellis, Esq.

Published Author:

2012-"Parental Kidnapping in America: An Historical & Cultural Analysis". 2012, Publisher, McFarland & Co., Inc.

1997- "Recovery of Internationally Abducted Children". 1997, McFarland & Co., Inc.

Parental Child Abduction Specialist – involved in more than 1,500 cases since 1994. Within this capacity I

have provided written and oral assessment of risk for a child to be internationally parentally abducted based on the American Bar Association, Center on Children and the Law research findings on specific risk factors and combinations of risk factors as well as annual country compliance to the Hague Convention on the Civil Aspects on International Parental Abduction.

1997- Current - Subject Matter Expert - Testimony was upheld in *Shady v. Shady* (Court of Appeals). I have been Qualified under Daubert Standards of Expertise in more than 3 dozen states. I have provided consulting services on subject matter for a variety of organizations from legislative and Congressional, to courts, law firms, independent persons and agencies, including media Since 1997. Issues addressed in testimony include, Shariah law, Dual nationality, female genital cutting, child brides, forced/arranged marriage, the Hague Child Abduction Convention, Covert Recovery, UCCJEA, and U.S. Department of State/OCI.

2009- Peace Building Advisor through Mediators Beyond Borders (MBB) – Middle East Initiative (MEI). I was one of three individuals chosen from the United States to act in the capacity of advisor to Neve Shalom/Wahat al-Salam (Recipient of multiple nominations for Nobel Peace Prize) (Israel) in creating and supporting a community mediation model and program for high conflict within a multicultural context. Interacting with Ahmad Hijazi was the Director of the School for Peace at Neve Shalom/Wahat al-Salam (NSWAS) and Abdessalam Najjar head the Pluralistic Spiritual Centre in WASNS.

Certified Advanced Cross Border Mediator

Virginia Supreme-Court Certified Mediator (Juvenile and Domestic Relations). Internationally Accredited through International Mediation Institute (IMI) in the Hague, Netherlands. Cross border mediation/ADR focusing on international child custody matters, particularly in non-Hague countries. **Advanced Cross Border Family Mediation with an Emphasis on the Hague successfully completed through the University of Miami, School of Law.*

. **Consulting:** Work in cooperation with professionals, foreign and domestic, on case specific tasks to determine risk, disseminate information on resources, training, and case support. Analyzing options for remedy; identifying resources, logistics, support, collateral concerns, etc. Developing strategy for remedy, and coordinating support resources. Reporting, briefing, de-briefing to stakeholders, both oral and written. Prepared opinion reports, field support, assessment, resource referral and/or other assistance to various agencies including law enforcement (FBI, Interpol, local law enforcement) judicial, diplomatic, and Non-Government agencies, both foreign and domestic.

2011- Student: Have returned to University to complete a degree in psychology; specializing in anthropological psychology.

Education:

Regent University, Virginia. Psychology.

University of Miami, School of Law. Miami, FL. Advanced Cross Border Mediation.

Polk Community College. Winter Haven , FL

U.S. Institute of Peace

FEMA/Homeland Security

Specialty Training (Successfully completed training and received certificate in the following) : *Partial listing

CUE Conference – Human Trafficking

FEMA/Homeland Security – Human Trafficking

U. S. Department of Defense – Anti-Terror

2011 – Domestic Violence and the Hague treaty.

Conflict Analysis – U.S. Institute of Peace

Interfaith Conflict Resolution –U.S. Institute of Peace

Negotiation – U.S. Institute of Peace

“Building Partnerships in Tribal Governments” –FEMA/Homeland Security also, (Effective Communication, Leadership & Influence, Problem Solving, and more)

Secondary Specialty Training: Child Development, Parent Educator, Sulha, Crisis Negotiation, Alienation, FMG, Intimate Family Cultural Traditions and Practices, Child Care, Domestic Violence screening, DV & the Hague, Ethics...and more

Most Recent Activities:

2012- Presenter/trainer for the Virginia Women Attorney's Association. Theme: Immigration

2011 – Successfully completed Virginia Supreme Court Parenting Program and recognized to train the trainer.

2011 - State Department Undertakings for the Hague Convention on the Civil Aspects of International Parental Kidnapping. Washington, D.C. Participant in reviewing application and effectiveness of Hague convention.

Presenter at Annual MBB (Mediators beyond Borders) Congress, Washington D.C. John Hopkins. 2010. Speaking on ADR within Multicultural context.

Presenter at the University of Richmond Law School, "Cross Border Family Mediation". 2010.

Chair – Sub-committee for the International Peace Building Summit. Mediators beyond Borders (MBB). 2010

Developed Accredited Training Methodology in "Cross Border, Post Abduction, Non-Hague ADR". Methodology and curriculum development for professional training of lawyers, mediators and judges. Training approved through the ABA & Office of Executive secretary (VA) 2009. Training has commenced.

ACCOMPLISHMENTS

Selected and participated in the creating the U.S. Department of Justice Funded project, H.O.P.E. by working in collaboration with a group of selected individuals to create a program that offers parent mentoring. This program was completed in 1999.

Testified before the Congress of the United States, House of Representatives, Committee on Government Reform, Oct. 2-3, 2002.

Testified before the PA house. 2005.

Founder & President, P.A.R.E.N.T. International, an abduction support network and coalition, with NGO members from USA, Japan, Canada, UK, Argentina, Belgium, France, Germany and Switzerland. Sponsor of the International Abduction Conference. This agency was a prototype for the U.S. Department funded Project H.O.P.E.

Daubert/Frye qualified expert witness in more than a dozen states 1997 to Present. I have testified in more than 36 cases relating to Profiles and Risk Assessments that I have completed.

Development partner for the United Nations Poster Campaign, an international effort which recognizes human rights in international abduction cases. Approved by the United Nations. 1998.

Specialist in mediation methodologies most likely to succeed in culture specific conflicts, including the use of "joking kinship".

Development of International P.A.R.E.N.T. network (Global initiative offering family mentoring in cross-cultural family disputes).

Respondent, "Profile of an Abductor" Research Project conducted by The American Bar Association/Center on Children and The Law, Funded by U.S. Department of Justice, 1997.

Assisted in reviewing/commentary and lobbying of SR 293, which passed in a unanimous vote by US Senate in Oct. 1998, the Synclair-Cannon Act, and the Texas Abduction Prevention Act.

Lend technical support to Prime Time, 24 hours, Dateline and other investigative shows on parental abduction topics · More than 100 media credits, including, CNN, Fox, Readers Digest, MSNBC as well as international media forums, i.e. Brazil, Germany and France, 1993-Present.

Board Member, (MCIC), California, 2000-2001. Non-Profit Missing Persons agency.

Faculty Member, 13th annual Children's Rights Council, International Conference, Washington, D.C., 2001.

Former Board Member, SOS France, a French Justice Department funded NGO working internationally to address issues of international abduction through participation in international forums and individual case intervention. 2001.

Appointed Committee member for Virginia 2007 project.

PROFESSIONAL MEMBERSHIPS

- . Mediators Beyond Borders (Middle East Initiative)
- . IMI Certified Mediator *(International accreditation)
- . United Nations Peace Building Commission
- . Home Educators Association of Virginia
- . Virginia Supreme Court Parent Educator
- . Virginia Supreme Court Trainer for Parent Educators
- . Virginia Supreme Court Mediator
- . Virginia Writers Club

PUBLISHED OPINIONS:

Shady v. Shady Dec 11, 2006 Court of Appeals, IN

BOOKS/PAPERS Authored

- . Author, Article: "[INTERNATIONAL CHILD ABDUCTION: Competent Assistance in Prevention](#)," World Expose, September 2002.
- . Author, Report: "BEFORE THE HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE TEXAS HOUSE OF REPRESENTATIVES, THIS APRIL 28, 2000: Implementation of The Hague Convention on the Civil Aspects of International Child Abduction by Mexico."
- . Author, Report to U.S. Embassy, CG, Costa Rica: "COSTA RICA: Profile Of An Underground." 2000. [Requested].
- . Author, "Lebensborn: From the Inception to the New Millennium," 2000. Used in European court of Human Rights.
- . Author, "Obstacles in Returning Internationally Abducted Children." Presented to the United Nations Human Rights Commission. Geneva. 1999.
- . Author, "[Recovery of Internationally Abducted Children](#)", 1997 McFarland & Company Inc.
- . Contributing Editor, "International Resource Directory", 1998 & 1999.
- . Editor, PARENT International Newsletter, 1994-1999.
- . Author, "Safety & Security: Supervised Visitation Service Providers". Training Manual. 2007

Instructor/Trainer & Speaker Experience

- . Trainer, Virginia Mediation Network Conference. Oct. 2009. "Cross Border Family mediation.
- . Trainer, Neve Shalom, Israel. "Leverage in Sulha". Oct. 2009
- . Trainer, Commonwealth Mediation Group. "Cross Border Family Mediation". Nov. 2009

- . Presenter, Mediators Beyond Borders, (Middle East Initiative) "Historical Identification in the Fertile Crescent Region". July 2009. John Hopkins.
- Presenter for Children's Rights Council 13th annual conference. Washington, D.C. 2001.
- Invited attendee at the European Conference. London. 1999.
- Invited to International conference, "Hearing Children's Voices." Hosted by Cheri Blair, key note speaker, Hillary Clinton. London. 1999.
- Speaker, VCA, National Conference. Washington, D.C. 1999. "Impact of the Brussels II in cross border abductions in Europe".
- . Key note speaker for P.A.R.E.N.T. International Conference. Washington. D.C. 1997, 1998, 1999, 2000, 2001.
- . Presenter/trainer: CUE Conference. NC 2008.
- . Presenter for Supervised Visitation Network (SVN) annual conference. N. Dakota. 2006