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The U.S. Experience in Drafting Guidelines for Judicial Interviews of Children and Its Translation to Hague Abduction Convention Return Proceedings Globally

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Abstract: This article will focus on judicial interviews of children, in chambers, including in Hague Abduction Convention cases; the potential promise and pitfalls of conducting such interviews; and how the U.S. experience provides an excellent template for future discussions and work on creating a soft law instrument on this important information-gathering tool.

Keywords: interview; testimony; maturity; evidence; objection

1. Introduction

Judges do and will continue interviewing children in return proceedings brought under the Convention on the Civil Aspects of International Child Abduction (“Hague Abduction Convention”). Yet, the lack of informed guidelines makes this a dangerous prospect. A recent U.S. appellate court case serves as a cautionary tale when children are interviewed by a judge in a Hague Abduction Convention case. It also provides a significant starting point for discussions on the practice of interviewing children and highlights the complexity of these interviews in international cases.

In this recent case from the U.S. Court of Appeals for the Eighth Circuit, the parents shared custody of their 12-year-old child under the terms of a Swiss custody order (Dubikovskyy 2022)¹. The child’s mother unilaterally relocated the child to Missouri in the United States in the summer of 2020. About three months later, the father filed his lawsuit in a federal court in Missouri, seeking the child’s return to Switzerland under the Hague Abduction Convention. The court’s evidentiary hearing was held within six weeks of the lawsuit’s filing. As part of this hearing, the court interviewed the child with “only her parents’ attorneys present.” Two days later, the court appointed a psychologist to provide an opinion on the child’s maturity and independence, concerned that the child had been unduly influenced by her mother. Less than two weeks later, the psychologist provided a written report concluding that the child was mature, intelligent, and not influenced by her mother. Therefore, the court interviewed the child again, in chambers, without the attorneys.

The second interview is the starting point of our conversation. This second interview led the court to conclude that “there is no doubt based on [the child’s] words and expressions that she does not want to return to Switzerland.” (Dubikovskyy 2022). Under U.S. case law, for the court to refuse to return a child under Article 13 of the Hague Abduction Convention, the court must conclude that the child is mature and has more than a generalized desire to remain in the United States (Rodriguez 2016)². In other words, the child’s views must show particularized objections against returning to her habitual residence. The trial judge, realizing that the child must object to returning to Switzerland, and not simply state a preference, “asked [the child] if she knew the meaning of the words ‘objection’ and



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¹ Dubikovskyy v. Goun. 2022. No. 21-1289 (8th Cir.).

² Rodriguez v. Yanez. 2016. 817 F.3d 466.

‘preference.’” (Dubikovskyy 2022). The child, who testified in English, which is not her first language, apparently told the judge that “she did not understand ‘object.’” (Dubikovskyy 2022). The judge then tried to explain the definitions of the words “objection” and “preference” by offering examples, such as “I object to cleaning the bathroom[,]” “I object to my little sister yelling in my ears[,]” and “[d]o you object to getting up early in the morning to go to school?” (Dubikovskyy 2022). The child had, in her first interview, already stated her reasons for not wanting to return to Switzerland, including missing her mother, being unable to help with her half-sister if returned, having a substantially larger house in the United States that would allow for more pets and space, being unable to take her dog back to Switzerland, her desire to volunteer at the University of Missouri’s veterinarian clinic, her interest in large animals and passion for horse riding, and the opportunities in the United States to take riding lessons (Dubikovskyy 2021)³. At the conclusion of the second interview, the Court found that the child gave reasons for objecting that were “grounded in reality and are not superficial or childish. The reasons given are ones that an adult might consider when deciding where to live, i.e. family responsibilities, comfort, and opportunities to pursue goals that are meaningful and inspiring to them.” (Dubikovskyy 2021). Based on the child’s objection, the court denied the Petitioner’s request to return the child to Switzerland.

The Petitioner father appealed. On appeal, he did not argue that the child was immature. Instead, he focused on whether the child’s words met the standard of a particularized objection (Dubikovskyy 2022). The appellate court, in reviewing the record, stated that, after the trial judge’s explanation of the words “objection” and “preference” to the child, the judge then asked her if she “objected” to returning to Switzerland, or whether she “preferred” one location over the other, and the child’s response was “equivocal.” (Dubikovskyy 2022). “Her most complete answer was: ‘I would say it’s, like, middle, but yeah. Maybe I object—I don’t know . . . I mean, I—I’m kind of in the middle, but I think I—I’m more on the object—object side. I don’t know. Objection. Yeah.’” (Dubikovskyy 2022).

The U.S. appellate court, since it reached the opposite conclusion to the trial court, reversed the trial court’s judgment and remanded the case, with directions to grant Mr. Dubikovskyy’s petition and promptly return the child to Switzerland. This presented another interesting component of this case. The trial judge rendered a decision quickly. The evidentiary hearing was held weeks after the Petitioner father filed in the courts (Dubikovskyy 2021). An ultimate decision to not return the child was made within one academic semester of the child’s residing in Missouri. Yet, by the time the appellate court reached its decision, automatically returning the child to Switzerland after it reversed the trial court, the child had two more years of integration into her academic and social environment in Missouri, returning to Switzerland a very different young woman. The delay by the appellate court is clearly extensive, which is not uncommon (Radu 2022⁴; Golan 2022)⁵. By reaching the opposite conclusion, after so much time, this child’s life became unsettled. Setting aside the need to address such lengthy delays, could guidelines have helped the trial judge and the appellate judge look at the child’s interview through the same uniform lens, so that the outcome from the trial court to the appellate court was the same?

The trial judge and the appellate judges, in the same region of the United States, reached very different conclusions over whether the child objected to returning to Switzerland, even though they applied the exact same correct legal standard, and heard (or read) the precise same words come from the child’s mouth. Coupled with the appointment of a psychologist for the limited scope of determining if the child was mature and had been influenced, the child’s language skills (speaking English, French, Russian, and some German), and the child’s having already spoken to the court in Switzerland when the Swiss

³ Dubikovskyy v. Goun. 2021. 2021 WL 456634 (W.D. Missouri).

⁴ Radu v. Shon. 2022. 142 S.Ct. 2861.

⁵ Golan v. Saada. 2022. 142 S.Ct. 1880.

court was examining the child's best interests in rendering the child custody order, one can see that this is a highly complex process with a variety of complicating factors. Should the trial judge have been speaking with this child? If so, should they have spoken through a foreign language interpreter? Should they have asked the psychologist to participate in the conversation, or even conduct the interview? What questions should the judge ask of the child, and how? There are a variety of questions that this and other cases raise that should give the international community a genuine desire to further examine the role of the interview of children in Hague Abduction Convention cases. For not only this child, but all children, what is most needed is consistency. Unfortunately, that will not come without guidance for those conducting the interviews.

2. Considerations for in Camera Interviews

In camera interviews are not a bad tool, although as demonstrated in the *Dubikovskyy* case, there are a myriad of concerns that become immediately evident—the ability to communicate with a child, language comprehension, cultural issues, implicit bias, and the scope of the proceeding, among other things. The *Dubikovskyy* case also demonstrates the complexity of judicial interviews in Hague Abduction Convention cases. When the interviewer controls the questions, they get certain information, which may not give a full picture. When the interviewer is also the assessor making the ultimate decision, they may have a predisposition to a certain outcome, so they may hear what they want or expect. The line of questioning in *Dubikovskyy* that focused on the definition of “objection” and “preference” was awkward, at best. Further, in a summary proceeding, there may be other resources or professionals that could assist the court in its interview process. For children who are in the middle of such a high-conflict situation, they have special considerations—trauma, new environments, and absences from one or both parents, among other things. Judicial interviews may not be the best tool for all children and families, and in all situations. They may not be the best tool in all jurisdictions and court systems. They may not be the best process for all judges, given the disparity in judicial training and resources. Yet, they provide a cost-effective tool, and, when done correctly, can help provide information for the court that, taken in context, could lead the court to reach certain conclusions necessary to the legal questions presented by the parties. They also serve as a cathartic tool for a willing child—the opportunity to share the child's views with someone who is deciding the next phase of their daily life.

The U.S. Uniform Law Commission (ULC) examined the U.S. approach to hearing children in their parents' private disputes, appointing a study committee to explore the need for uniformity and the feasibility of a uniform law that relates to a child's participation in family law proceedings. When focusing on in camera or judicial interviews of children, the ULC Study Committee highlighted four key issues: (1) when and by whom a child interview is appropriate, (2) the scope of an in camera child interview, (3) the protection of the parents' due process rights, and (4) the protection of the child from coercion or retaliation.

2.1. The U.S. Uniform Law Commission's Work

Recognizing that a child's input is an important component of cases where the child is at issue, but that the law often leaves voids in how to incorporate a child's views in private disputes between the child's parents, the U.S. Uniform Law Commission (ULC) appointed a Study Committee in November 2021 with the goal of assessing whether the ULC should undertake the drafting of a new uniform law that can be enacted throughout the United States, particularly in U.S. jurisdictions that may lack existing procedures ([Study Committee on Child Participation 2021](#)). The ULC, established in 1892, has long provided clarity and stability in critical areas of U.S. state law that need consistency (www.uniformlaws.org, accessed on 1 February 2023). In the area of family law, the ULC has focused on issues such as custody jurisdiction, child support jurisdiction, child abduction prevention, family law arbitration, and military deployed parent rights. One key example of how the ULC

has ventured into the field of international family law is when it updated its child support jurisdiction statute to give effect to the Hague Child Support Convention at the state level (UIFSA 2008). The process by which the ULC undertakes its work typically starts with a project proposal submitted by a panel of expert lawyers to a committee within the ULC, justifying the need to study the project and assessing whether it may ultimately prove useful to states in harmonizing their laws. The Study Committee, if appointed, typically meets multiple times, and, with the guidance of a Chair and Reporter, explores existing practice among U.S. states, and ends its work with a proposal to the ULC as to whether a Drafting Committee should be convened.

At the end of one year of work, the ULC Study Committee on Child Participation in Family Court Proceedings recommended that the ULC appoint a Drafting Committee. In other words, the Study Committee concluded that the existing law among U.S. states warranted a new law that states could enact that would provide more consistency and uniformity for a more cohesive national practice. During the year-long Study Committee undertaking, a variety of experts were consulted and joined in the meetings and debate, including lawyers, judges, legislators, mental health professionals, lawyers for children, and academics. The Study Committee narrowed its original project focus, however, when making its December 2022 recommendation to the ULC. Consistency also has an ancillary effect in Hague Abduction Convention matters. If U.S. state practice is consistent in the process of hearing a child's voice, this disincentivizes forum shopping by abducting a child to a particular U.S. state to have that child heard (or not).

The Study Committee concluded that it would not be useful to conduct work on the appointment and role of children's representatives, including lawyers. The ULC had already approved a model law on that topic (*Model Representation of Children 2007*). The Study Committee also distinguished between a child's oral testimony as a fact witness and that of providing an opinion to a judge through an interview. While some laws among U.S. jurisdictions interchange the words "testimony" and "interview," there is a distinction. Testimony invokes a formal court process, subject to civil rules of procedure and with evidentiary limitations, such as forbidding hearsay testimony (Federal Rules of Evidence, Rule 801). An interview is different. A child who is interviewed is not limited by having their words restricted by evidence rules. A child interview is frequently structured in a protective format, focused on the dual concerns of a child's needs and a parent's rights. Therefore, the Study Committee decided any work should avoid formal testimony by a child witness, as that is sufficiently covered by a court's existing rules. Additionally, the Study Committee decided that a project that involves the role of an expert evaluator who gives a formal opinion is beyond the scope of what needs exploration. Evaluators are often mental health professionals, who have rigid guidance by their own licensing bodies and formal practice guidelines for conducting certain forensic evaluations (*American Psychological Association Guidelines 2010*). The one area, however, that is most in need of guidance—where there is a large void in what to do, when to do it, and what it should look like—is a judicial interview of a child. Judges interview children. Yet, the variations among judges, even in the same courthouse, can be dramatic, and lead to opposing outcomes and inconsistency for children and families.

2.2. Why the United States Provides a Unique Incubator for a Global Project

The U.S. implementing legislation for the Hague Abduction Convention provides for jurisdiction to be vested in both state and federal courts in the United States (22 USC §9003(a)). There are no centralized Hague Abduction Convention courts in the United States, and almost any courthouse in the entire country is the potential venue of a parent's petition to return their child under the Hague Abduction Convention. The actual process (courthouse, length of time until a hearing, experience of the judge, availability of resources) differs by court and state. Depending on the court and state, judges may be appointed by a chief executive or elected by the public or a combination of both. Some courts may

be vested with general jurisdiction, with each judge hearing a range of cases on the same docket. It may be heard by a judge with no experience in family law.

Each U.S. state dictates its own training standards for its judges. Each judge will have their own political persuasion, ethics, religion, culture, and view of the world. Some state courts will have rules that provide for their family courts to interview children, while others will not. Each U.S. jurisdiction will vary in the role a lawyer may undertake on behalf of a child client. Each state, with its own budgetary constraints and priorities, will have different resources—different access to interpreters, court reporters, or ability to hear a case expeditiously. Others may have therapy dogs, on-site social workers, and dedicated judges to handle Hague Abduction Convention cases. The states of the United States have the same complex and dramatic variations that we find from one country to another.

To give an example that is the macrocosm of the United States, consider the wide variation among different U.S. states when it comes to interviewing children in their parents' custody cases (Bala et al. 2013). For the most part, it is entirely at the discretion of the judge—when, how, and with what weight. In Georgia, a child aged 14 has the absolute right to “select the parent with whom he or she desires to live[.]”, unless the judge determines their selection is not in their best interests. However, the method by which this “selection” is shared with the judge is entirely within the judge's discretion, without any guidance (GA Code § 19-9-3 (2020)). In California, a child aged 14 that wishes to address the court regarding custody or visitation must be permitted to do so, without their parents' presence, all within the scope of the child's best interests. While the California statute does not give strict guidance on a judicial interview, it does give the judge wide discretion to seek assistance by appointing a lawyer for the child, an evaluator, investigator, or a recommending counselor. The law specifically states that the child is not required to express their views (Cal. Fam. Code 3042). Compare the U.S. state laws that provide courts discretion to interview children with the law in Florida state (family) courts, where any child who is a witness, a potential witness, or related to a family law case is prohibited from attending any part of the proceedings, including depositions, proceedings in the court, and even proceedings using technology, unless a court permits their attendance by court order (Fla. Fam. Law. R. P. 12.407).

While a handful of U.S. states have codified some amount of permission for courts to interview children in statute, it is rare to find specific guidance on what those interviews should consist of, how they should be conducted, or what guidelines a judge should use when assessing the appropriateness of the interview, the questions, and the ultimate assessment of the child's views. Some U.S. states have elaborated on this in appellate case law, but not many. It is, in almost all circumstances, again left entirely to the discretion of each individual judge to decide. The guidance, in case law, can range dramatically, just like the existing statutes. For example, the Virginia Court of Appeals has specifically stated that its preferred method of receiving evidence from a child is through an in camera interview, as opposed to in-court testimony (Haase 1995)⁶. On the opposite end of the spectrum, and geographically adjoining Virginia, is the District of Columbia, which permits in camera interviews only in rare situations when there is a “firm factual foundation that such harm may result if a child is made to testify in court.” (ND McN 2009)⁷. Two abutting jurisdictions, two opposing views, with children who might all play at the same playground, are in the same daycare, and participate in the same activities.

Most case law, if it exists, focuses on the protection of the child as it relates to the protection of the parents' due process rights, and whether the interview must be recorded, and, if recorded, be provided to the parents, and when. The case law also tends to flesh out who may be present during these interviews, ranging from court personnel, the child's attorney, interpreters, court reporters, the parents' attorneys, to professionals the judge felt necessary to assist in the interview, but rarely, if ever, the parents themselves (Helen

⁶ Haase v. Haase. 1995. 20 Va.App. 671, 680.

⁷ ND McN v. RJH Sr. 2009. 979 A.2d 1195, 1200.

SK 2013⁸). Above all, the case law makes it clear that it is difficult, if not impossible, to interpret a child's preference, with a Michigan court's noting that "even an experienced interviewer may find it difficult to determine 'whether the child is truthful, intentionally deceptive, or unwittingly led . . .'" (Molloy 2001)⁹. There was even disagreement among the U.S. states as to whether a judge must limit the discussion with the child to the child's wishes (opinions, desires), or whether the judge may engage in evidentiary fact finding during these in camera interviews (Jackson 2005)¹⁰.

In the United States, there is no national law that permits (or denies) a judge the right to interview a child, although judges may do so at their discretion. In U.S. states, the child interview statutes, if any even exist, tend to focus entirely on custody (parenting) cases, and there is no law directly on point for interviews of children in Hague Abduction Convention cases. Despite there being no law or guidance on point for U.S. Hague Abduction Convention judicial interviews, judges routinely interview children, and recent U.S. case law shows a trend towards more judicial interviews, not less. Without existing guidance, it is unclear how judges are exercising their discretion in determining whether a child should be interviewed, how to conduct the interview, and the scope of it. There is no guidance on protections for the parent or child. Because there is a lack of guidance, there are a variety of questions that arise when one reviews the case law. Do we know if a different judge would have done the same thing? Do we know if the child had been abducted to a different U.S. state, that the same process would be employed? Could a parent forum shop, by abducting their child to a specific state, or even a specific venue within a state to dictate the mechanism by which the child is heard, thereby effecting a different outcome in the Hague Abduction Convention return proceeding?

A review of the recent U.S. case law shows the upward trend in interviews and provides a sampling of the different approaches to child interviews by Hague Abduction Convention judges in the United States. For example, a Florida federal district court conducted in camera interviews of the children, but also ordered that the children be interviewed by a psychologist separately (Romanov 2022)¹¹. Although the interviews were conducted outside the presence of the parties or counsel, the court provided the parties with summaries. The court ultimately ordered the return of the children, finding that the children had not voiced a sufficiently particularized objection to their return. The U.S. Court of Appeals for the Eleventh Circuit (a federal appellate court) upheld a decision not to return based on the exception of the mature child's objection after two in camera interviews, one conducted outside of the presence of the parties or counsel, and the second conducted with the parties listening by telephone and based on questions that they had submitted to the judge in advance (Romero 2020)¹². In contrast, a New Jersey federal district court was asked to hear testimony by the children, but declined, finding that it was duplicative of other evidence, and the court was concerned about the potential influence the abducting parent had over the child (JCC 2020)¹³.

When U.S. judges interview children, there are struggles. Take, for example, a recent Hague Abduction Convention case in Texas (Esparza 2022)¹⁴. The judge granted the Respondent mother's request to have her 2 children, ages 11 and 6, interviewed by the judge in chambers so the court could rely on "live, oral testimony as well as the demeanor of the witness." (Esparza 2022). The court was tasked with determining whether these two children were mature, had a particularized objection, and were unduly influenced. Ultimately, the court determined they were not mature. Yet, in doing so, it acknowledged that the interview took place under "unusual circumstances." (Esparza 2022). Neither child

⁸ *Helen SK v. Samuel MK*. 2013. 288 P.3d 463.

⁹ *Molloy v. Molloy*. 2001. 247 Mich.App. 348, 358.

¹⁰ *Jackson v. Herron*. 2005. 2005 WL 1861965 (Ohio).

¹¹ *Romanov v. Soto*. 2022. 2022 WL 356205 (M.D. Fla.).

¹² *Romero v. Bahamonde*. 2020. 2020 WL 8459278 (M.D. Ga.).

¹³ *JCC v. LC*. 2020. 2020 WL 6375789 (NJ).

¹⁴ *Esparza v. Nares*. 2022. No. 4:22-CV-03889, (S.D. Tex.).

spoke English, so they testified through an interpreter. During their respective interviews, they “kept their eye cast downwards and spoke in a quiet manner.” (Esparza 2022). They only spoke a few words at a time, and they were unable to explain their answers, often saying “yes” or “no” or “I don’t know” or one-word answers (Esparza 2022). The judge, in reaching the conclusion that the children were not mature, compared the way these 2 specific children answered questions with a case several years earlier, where a 13-year-old exhibited a similar tone and facial expressions in a judicial interview. Comparing these children to children in a prior case in a different court with a different judge at a different time (and with different parents, culture, etc.) may ignore the unique traits of the children before this judge, their distinct communication style, their cultural communication patterns, and their history with adults or authority figures, among other things.

Still, other U.S. judges have interviewed children, but alongside other interviews, such as by the child’s Guardian Ad Litem, to help the judge confirm their own evaluation of the child’s words, views, and maturity (Carlson 2023)¹⁵. Depending on the jurisdiction, the appointed Ad Litem for the child also provides a report, to be considered along with other evidence, in addition to any judicial interview (Preston 2023)¹⁶.

In yet another example of a recent Hague Abduction Convention case, the court interviewed the children, and elicited information about their habitual residence (not just their objections to a return) (Sain 2021)¹⁷. The children had been living in China with their father, but, because of COVID, had traveled to the United Kingdom with their father. Once there, the children and father resided with the mother before traveling to Florida, where the return petition was filed by the mother, seeking their return to England. The children clearly described China—the place with friends, school, and most of their personal belongings—as their home. They described their time in England as temporary—residing with their mother and her boyfriend, going on walks, and seeing tourist sites (Sain 2021). A Florida judge likewise interviewed 2 children, ages 13 and 10, who described Florida as home and minimized their connections to Canada, where they had been living for over a year prior to their retention in Florida (Watson 2023)¹⁸. Some U.S. courts interview children to elicit their opinion, while others seek factual information. Is this the correct use of a judicial interview? How did the judge decide they would seek this information from the children? Did it come naturally during the interview, unprovoked? Did the judge design the interview specifically to secure information that could form the basis of their ultimate decision? Would the neighboring U.S. state courts, or even different courts or different judges within the same state, define the scope of this interview differently, all but encouraging a parent to forum-shop? How does the judge weigh the children’s views on where is “home”?

Given the disparity among states, it is easy to see that the United States suffers internally with the same struggles experienced among other countries. There is a range of approaches among other countries in how a child is heard, and a range in whether laws/rules even exist for judicial interviews of children in Hague Abduction Convention cases (Elrod 2011). Countries vary in resources, such as whether they have the ability to train their judges, have centralized Hague Abduction Convention courts, or have psychologists on staff. Some countries may have established processes for eliciting a child’s view in Hague Abduction Convention cases; others may have none. This inconsistency could lead to forum shopping to seek a more sympathetic court that would hear a child a particular way. This lack of uniformity could lead to delays and inefficiencies in courts. There is room for a global project to develop a soft law instrument to provide the lacking guidance.

¹⁵ Carlson v. Carlson. 2023. No. 1:22-cv-00345-MSM-PAS (D.R.I.).

¹⁶ Preston v. Preston. 2023. Civil Action No. 4:22-CV-00990-CAN (E.D.Tex.).

¹⁷ Sain v. Sain. 2021. No. 8:21-CV-01229-KKM-AAS, (M.D. Fla.).

¹⁸ Watson v. Watson. 2023. 8:22-CV-2613-WFJ-TGW (M.D. Fla.).

3. A Global Project

Given the differences in practices worldwide, any project should start with a review of the global landscape to assess the differences in what currently happens from country-to-country, including whether there is a lack of uniformity within the country. This information can be used in crafting a tool that will ultimately help countries, regardless of resources and processes.

3.1. *The Focus of a Global Project*

In 2003 and in 2018, the Hague Conference on Private International Law sought the views of judges and experts from a wide range of countries to publish newsletters focused on the child's voice in parental child abduction proceedings (*Judges Newsletter*, 2003, 2018). The articles in both newsletter editions clearly showed the difference in existing laws and practices. Even the authors themselves seemed to disagree on the purpose of involving a child in the process. For some, it was clear that their only focus was to elicit whether a child objected to returning to their habitual residence, while others felt that a child's views could provide evidence to support (or not) any element of either parent's legal case. Finally, still others felt that including the child serves no evidentiary purposes, but is merely cathartic and educational for the child, whose life is clearly being impacted (Hale 2018). Therefore, the initial discussion in any global project needs to ask the purpose for hearing children in Hague Abduction Convention cases. While a discussion focused on the Hague Child Protection Convention may lend itself better to exploring the wide range of child interview techniques and processes, with most existing law or processes focused on custody (parenting) matters, the summary nature of Hague Abduction Convention proceedings, and the unique nature of these cases, coupled with more courts venturing into interviewing children without guidelines (or with inconsistently applied guidelines), presents a different challenge and the best place for engaging in meaningful discussion. It is where there is a void of guidance, to date.

3.1.1. Why the Hague Abduction Convention and Not All Children's Cases?

Some judges have raised concerns that the very nature of a parental child abduction, with the added distress and emotion beyond a custody case, should cause any judge, even one experienced in interviewing children, to question how to interpret the child's voice in an interview (Celeyron-Bouillot 2003). An interview may serve to isolate the child within their family, traumatize the child, make the child into an advocate for a parent, or even elicit inaccurate information that could lead a court astray in making its ultimate decision. When a judge interviews a child, they need to interpret the child's words and unspoken body language, and then look at this communication through the complex lens of a parental child abduction. Added to that complexity is the fact that an interviewer should act at arm's length, a contrast to the judge who will need to make a legal assessment and decide whether to ultimately return the child (Diamond 2003).

Parental child abduction cases are simply different—the children tend to have different and more complicated external influences that factor into their voice. Hague Abduction Convention cases are different in that they are not custody cases and should be focused summary proceedings. Given that the challenges are different, if a global project explores all children's cases, it may miss providing the most appropriate guidance. The narrower focus of a project on Hague Abduction Convention return cases will provide the best tailored guidelines for judges.

3.1.2. Why in Camera Interviews, and Not All Ways to Hear Children?

Much like the narrower focus of the ULC project, a global project should have a narrow focus on in camera interviews of children, instead of focusing on all the potential avenues by which a child should or could be heard. It is inevitable that interviewing children is not the only option to hear them. It may not even be the best option in some, many, or all cases. Yet, it is the practice with the least clarity in the law. It is also very practice-focused,

and not legally structured. It is a discretionary practice in many jurisdictions, without any guidance as to how judges should exercise that discretion, and when.

There are clearly other alternatives—designating or appointing a lawyer or representative on behalf of the child, seeking an expert to provide a reasoned and sophisticated opinion after speaking with the child, or having the child go through the formal process of testifying as a witness in the court proceeding. Each has its own benefits and drawbacks. A judge may determine one of these options is better for a particular child, or that the child should be the beneficiary of several different processes simultaneously. A global project, while laser focused on judicial interviews, could also explore what other options exist, and what criteria a judge should use to exercise their discretion in determining another option is better for a particular child than a judicial interview.

While it is necessary to include a broad range of professionals and expertise in any global project, the scope of a global project should remain focused on interviews of children, and not be about the credentialing and training and process of these other professionals in ascertaining a child's views. Each process could serve as its own independent project. A narrower scope should lead to a manageable project; a focused discussion; and more practical, tailored guidance.

3.2. Next Steps for a Global Project

Guidelines, or at the least, a reflection of practices, both when they have worked and when they have not, may prove extremely useful to judges in deciding whether to interview a child in chambers, and how to structure that process if they choose to use it.

3.2.1. The Role of the Hague Conference

The Hague Conference has the appropriate institutional knowledge of past discussions, resources, and research. It has the gravitas to gather the most important views on the subject. It is a neutral body to oversee the discussion, with no ultimate stake in the outcome, but for the better implementation of its own Convention. It has a direct pipeline to the International Hague Network of Judges, perhaps the most important participant in any discussions on judicial interviews of children.

Professors Marilyn Freeman and Nicola Taylor, after conducting research about the role of the child's voice in Hague Abduction Convention cases, proposed the creation of an International Working Group, which was to start its work in July 2019 (but was delayed because of COVID) and would be independent of the Hague Conference on Private International Law (Taylor and Freeman 2018). However, it would be beneficial to convene such an experts' group of judges, practitioners, and mental health professionals to discuss this topic under the auspices of the Hague Conference and have its work product take the form of a soft law instrument.

3.2.2. Questionnaires

The child interview is but one data point in a broader picture of a particular family. The examination of the child and their needs, experiences, skills, and culture must start early in a Hague Abduction Convention case to determine the most appropriate process to hear the child's voice for this particular child and family. The examination of the family itself can help tailor the best process to include the child's words in the most accurate and protective way, and permit the judge to tailor the process in the best manner for everyone.

As with most projects undertaken by the Hague Conference, a questionnaire would serve to clarify existing standards and provide a starting point for any discussions on this topic. A questionnaire could be sent to Hague Abduction Convention Contracting States, and could include questions, such as:

- Under what circumstances do your courts use in camera interviews in Hague Abduction Convention cases? Under what circumstances would they not use in camera interviews?

- At what point in time in the process/proceeding would an in camera interview be conducted? Would it ever be conducted before evidence is taken by the fact-finder/judge? Would it ever be conducted after evidence is taken by the fact-finder/judge?
- If courts do not interview children in camera in Hague Abduction Convention cases, how do the courts hear from children in these cases?
- If there is no process or guidance on in camera interviews of children in Hague Abduction Convention cases in your jurisdiction, is there such guidance in other parenting cases that might be translatable to Hague Abduction Convention cases?
- Who conducts the in camera interview? Is it always the judge? An alternative to the judge, and when? The judge and others?
- Who is included in the in camera interview? (e.g., lawyers, court personnel, other professionals, parents)
- What is the training of the interviewer?
- What is the scope of the interview? Is it to collect evidence on any issue before the court? Is it only for the child to express an opinion? Is it only to advise the child of the proceedings and provide them an opportunity to be heard?
- What issues are part of the interview? (e.g., Article 13 mature child exception, or other parts of the Convention case)
- Are the interviews recorded? Private?
- If the interview is recorded, who has access and when?
- What measures are put in place for child protection?
- Where is the interview conducted?
- What is the average length of an interview?
- Is there usually one interview or more than one interview of the same child?
- If there is more than one child, are the children interviewed separately, together, or a mix?
- Will the child be able to have access to the Petitioner (Left Behind) parent in advance of any interview? With the Respondent (Taking) parent?
- Does the court structure how the child is transported to the interview?
- Are interviews used in other complimentary processes, such as mediation?
- Does your jurisdiction have any existing laws that touch upon child interviews in Hague Abduction Convention cases? (include a copy or citation)
- Under what circumstances is an in camera interview accompanied by another process, such as a child's lawyer, expert evaluation, or in-court testimony?
- Who assesses the child's maturity and how? Are there factors in your law? (include a copy or citation)
- Who prepares the questions to be asked?
- Approximately how much time runs from the filing of the return petition to the child's interview?
- Approximately how much extra time is added to the proceedings by interviewing the child?
- Have there been any recent court cases in your jurisdiction that provide examples of an in camera interview in a Hague Abduction Convention case? Does your jurisdiction have any important (precedent-setting) court cases on the topic?
- Does your court provide a foreign language interpreter for the child? Who determines if a child needs an interpreter? Is there a cost, and who typically bears that cost?
- What role does the Central Authority take in a child interview?

3.2.3. "Study Committee"—i.e., Experts Group

When convening an experts group about in camera interviews of children, there are a wide range of professionals that need to be included. They include psychologists, judges, court administrators, cultural experts, mediators, lawyers, and child representatives, among others. Any discussion must include judges from a wide range of jurisdictions, including those who are familiar with the Hague Abduction Convention and may sit on

the International Hague Network of Judges. It should account for differences in judges in civil and common law jurisdictions (and, in federated states, such as the United States, federal and state court judges). These judges can lead an excellent discussion about what their courts can do, and how well they can accomplish the goal of hearing a child across a wide range of processes: interviews, testimony, or experts.

3.2.4. Soft Law Instrument

A soft law instrument is a far superior vehicle through which to share useful information that can be implemented in states. Each country has different resources—different funding for their courts, different training schemes for their judges, and even different courts that will ultimately hear the cases. The discussion should focus on practice, which is more often implemented through guidelines or practice tools, rather than legal instruments. A soft law instrument may include topics ranging among training suggestions, whom to include in an in camera interview, and who should conduct the interview. The result needs to be flexible, and implementable in part or in whole in a wide range of jurisdictions with different resources and structures. The goal should not be to force a particular method of hearing a child, but to give a judge, on the ground, options so that children can be heard more easily, in a manner best for the child and family, while preserving the integrity of the process and adhering to the goals of the treaty for a prompt return. Guidelines may invoke training or judicial education suggestions. A new Convention that mandates such training, for example, will unlikely prove popular (Serghides 2003). In a country as vast as the United States, without centralized courts, it may be beneficial that the International Hague Network of Judges, and other judicial groups, take a role in putting forth views on what training can even exist in their jurisdictions, given a need to focus resources for judicial training.

While an Experts Group has the primary responsibility of directing any global project, it can decide to host public fora, particularly with the ease of virtual platforms to do so. A public forum at strategic points in the Experts Group's work could help inform it on practice, concerns, and focus. It may prove useful in allowing a farther reach to regions and jurisdictions that may not be directly engaged in the Experts Group. Different public meetings could focus on different professional groups, for example, one forum for judges and a separate forum for mental health professionals.

4. Summary Conclusions

A soft law instrument that focuses on practical and implementable processes and helps educate courts globally on options for hearing children will lead to more consistency among courts' practice in Hague Abduction Convention cases, which should lead to more routine hearing of children in child-focused ways. It will help with the implementation of the Convention and contribute to the goal of ensuring that children are heard uniformly and that cases are resolved expeditiously. The United States' existing work in this field is instructive on how best to narrow the focus of a global project in that the United States is a unique incubator of the global legal community, with different courts, resources, education, training, and application of laws and process (at times, diametrically opposed).

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