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CRIMES AGAINST CHILDREN

CARDOZO JOURNAL OF LAW & GENDER SYMPOSIUM*

FEBRUARY 15, 2011

Panel 1: *Helping Victims of Child Sex Abuse: Statutes of Limitations Reform*

Speakers:

Jeffrey Dion – Deputy Director, National Center for Victims of Crime

Robert Hettleman – New York Assistant District Attorney, Chief of the Child Abuse Unit

Karen Peterson – Delaware State Senator

Dr. Asher Lipner – Jewish Board of Advocates for Children

Mike Armstrong – Office of New York State Assemblywoman Margaret Markey

Moderated by Professor Marci Hamilton

Panel 2: *Bringing Our Kids Home: International Parental Child Abduction and Retention*

Speakers:

Matthew Antell – Director/Producer, *From the Shadows*

Corrin Ferber – U.S. Department of State, Office of Children's Issues

David Hearn – Director/Producer, *From the Shadows*

Courtney Houk – U.S. Department of State, Country Officer

Jeremy Morley – The Law Office of Jeremy Morley, International Family Law

Moderated by Vice Dean Edward Stein

* The views expressed herein are those of the individual speakers and presenters and do not necessarily reflect the views of any organizations, businesses or departments with which they might be affiliated.

PANEL 1**HELPING VICTIMS OF CHILD SEX ABUSE: STATUTES OF LIMITATIONS REFORM**

DEAN MATTHEW DILLER: Good morning. I'm Matthew Diller and I'm the Dean here at the Benjamin N. Cardozo School of Law and welcome. I'm really here to welcome you to a fabulous program about an incredibly important set of issues and I'm pleased and delighted the Journal and Cardozo Advocates for Kids have presented this program here at our school because this is exactly the set of issues that we as a law school should be focused on. I want to thank the Cardozo Journal of Law and Gender. I want to thank the editors, Robin Lee, Ann-Marie Soohoo, and Drew Levine who put together today's program. I want to thank the Cardozo Advocates for Kids, and I also want to thank Professor Marci Hamilton who is one of our nation's leading experts on Church and State, child advocacy, and the abuse scandals concerning clergy and children in this country and throughout the world.

Professor Hamilton is a brilliant scholar and a passionate advocate who always puts justice first, and I have to say that as a Dean I can't ask for anything more. She's a fabulous teacher and mentor to students as well. For Marci it's always about seeking justice and coming out in the right place and really nothing will stop her from getting to that point. That's an incredibly admirable quality, and you're a remarkable person.

Let me just say that our first panel is on Helping Victims of Child Sex Abuse: Statute of Limitations Reform. I remember many years ago when I was a law student learning about statutes of limitations, finding them at least from my narrow perspective as a law student to be technical and not worth thinking about seriously in any deep way. Then when I went out into the real world, into practice, I found that there were statutes of limitations issues all over the place, and that they raised incredibly deep and important questions about justice. There needs to strike a balance between the need to move on and create repose versus the just outcome in the case. Thus the goal in statutes of limitations is to find a meeting point, a balance between those two values. Obviously, the issue is more complicated, especially when we're talking about children or other vulnerable groups who are not in a position to assert their own rights and, indeed, where the issues are such that they may not come to light for years and years later.

Unfortunately, the widespread clergy child abuse cases have really forced us to think long and hard about the role of statutes of limitations and, in particular, their role in this situation. It's become a major issue in our legal system. Today's New York Times, as I'm sure many of you saw, has an editorial on the subject of the recent grand jury report coming out of Philadelphia which recommended a suspension of the statutes of limitations, a position which the New York Times endorsed. We are fortunate to have a superb panel here to address the issues. I'm

also excited about this afternoon's program where we at Cardozo will be showing "From the Shadows" which is a new documentary about child abduction, parental child abduction and retention in Japan and it should be fascinating, and we will have many of the people involved in making the film here to speak to us this afternoon. So, I'm looking forward to that, too.

For this morning, we're pleased to have Mike Armstrong, Jeffrey Dion, Bob Hettleman, Dr. Asher Lipner, Senator Karen Peterson, and our own Marci Hamilton. So, Marci, I'm going to give it to you. Thank you.

PROFESSOR MARCI HAMILTON: Thanks, Dean Diller, for kicking us off today and I want to thank all of you for coming out on a very cold and windy day. It seemed like spring might come yesterday, but we got fooled, but I just have to hold this up. I mean, no one knew the New York Times except, of course, them, was coming out with an editorial today on the topic of this morning's discussion. I think that what that tells you, is how current and pressing the issue is. This is the third time that the New York Times has suggested that the statute of limitations for child sex abuse be halted for a two year period so everybody can come forward even if they were previously barred. [This shows the paper's dedication to the issue.]

It's not something I ever intended to become involved in, let alone write a book about, but it turns out that opening the door to the courthouse is the key. If you don't open the door you don't get the stories, and one of the reason you don't get the stories is that if you are a child sex abuse victim and you just have a press conference with no lawsuit and you say that you were sexually abused by X, they then have grounds for defamation and libel suit against you. This has happened many times.

Right now there are two lawsuits pending against two national organizations that have named perpetrators not in the context of a lawsuit [not sure what Marci intended when she says ". . . not in the context of a lawsuit."]. So, this is really the only haven that victims have, and we're in a situation where we need to know how to get to the haven and how do you make it work. We have leading experts in the country on these issues to talk to us today about their involvement and then they will have a discussion and finally open it up to you for any questions. We're very fortunate to have with us Jeffrey Dion. He is the Deputy Director of the National Center for Crime Victims. I invited him to come here and speak on these issues and he has been a tireless advocate on these issues and working to try to find doors and windows that will open some way. We will hear from him first.

Let me just give you a flavor of what is actually going on in this universe. In Hawaii, there was a two-year window exactly like the one recommended by the New York Times today moving very quickly through the Hawaiian legislature. It had the backing of all of the victims groups and had the backing of all of the women's groups. There was no opposition. Last Thursday the Catholic conference, which is the lobbying arm for the Bishops, heard about it and they

immediately introduced legislation and they twisted the arm of the Attorney General's office and within 24 hours they killed the bill. So, sometimes you get whiplash in this universe—it is active, it is heated, and there are plenty of enemies. Normally in an academic atmosphere you try to bring in all viewpoints on this issue. We have invited the Catholic Conference lobbyists from this state and Pennsylvania. They didn't want to be in the same building with me—

[laughter]

—which is their choice, but I just want you to know that we did invite them and urged them to come and make their case. They just said no. So, we will have people who I agree with in many ways but also have very different experiences than mine in the field, and so with no further adieu, Jeff, please speak to everybody.

MR. JEFFREY DION: First, I want to thank Marci Hamilton for her leadership and scholarship on this issue. It makes a tremendous difference for all of us, who are out there working in the field, to have that support and the level of seriousness and respect that she brings to these arguments. I service the Deputy Executive Director for the National Center for Victims of Crime. It's the nation's leading resource in advocacy organization for victims of all types of crime. It was founded in 1985 by the children of Sonny Von Bülow, and we work with every type of victim, including victims of child sexual abuse.

I serve as the Director of the National Crime Victim Bar Association, which is a program of the National Center for Victims of Crime, and it's made up of private civil attorneys who devote some portion of their practice representing crime victims in civil lawsuits. We're one of the only organizations in the country that focuses on that but the National Center has longed believed that it was important for victims to have access to both civil justice and criminal justice if they're really going to fulfill their efforts to be made whole. Part of what we do with the Bar Association is help lawyers understand the latest developments in this area of the law, litigation strategies and tactics that will work. We also work to educate victim advocates.

With regard to the people that work in the prosecutor's office, the police department, and the rape crisis center, we help them understand civil issues so that when they are talking to victims they can spot the facts enough to say, "you know, you might have a civil case and you might want to talk to an attorney." I have spoken with hundreds, if not thousands, of victims on the phone as they would call us looking for a referral to an attorney, and the most frustrating type of call I get is when a victim calls me up and they've got a good claim and they've got someone that they can recover against but they've blown their statutes of limitations. They are really frustrated. They say, well, nobody ever told me that I could sue, and I say that it doesn't matter. Ignorance of the law is no excuse, as we all know, and so oftentimes who they're mad at is their victim advocate. They said this is the person who told me what was going on and what I needed to do, and they never told me

about the statute of limitations. It could be that the advocate didn't know about this, either.

Ofentimes when I do these training seminars the advocates will say, "you know, I've been in this field 10 or 15 years, and this is the first time that anyone has ever talked to me about civil remedies for victims." It could be that way because of where they were employed. For example, when I started in this field 13 years ago and I talked to advocates, I had people raise their hand who worked in prosecutors' offices and told me that if they said anything about a civil lawsuit to a victim, they would be fired, because prosecutors have this idea that all civil lawyers want to do is mess up their criminal case. That's not necessarily true.

With this area of law it really depends on the lawyer, and from our organization's perspective we want to make sure we get victims to attorneys who know what they're doing, and who don't want to do anything to jeopardize a criminal prosecution. There really are so many areas in which civil lawyers and prosecutors can work together and share information to achieve a full measure of justice for victims. But as we go out and train advocates and the public in general, it's important to understand why we need to treat these cases separately under the law. The law sets forth that you have a statute of limitations and that you have a limited amount of time to bring your claim.

You can't sit on your claim forever, and I think people have a difficult time with this because it challenges so many traditional notions of our understanding of the law. But, science and human experience has taught us that cases of child sexual abuse are so unique that I think there is about 33 states that have created some type of special exceptions for victims of child sexual abuse, and when I train advocates I always tell them you need to understand how the statute of limitations works across the country because the victim that you're most likely to encounter whose crime occurred in another state other than the one that you're working in is an adult survivor of child sexual abuse.

We're a transient society; people grow up, they move away from their family of origin, particularly if they were sexually abused by them, and so it's important to understand that. Whenever I talk to a victim, a survivor, I always say it's important that you tell me every state in which the abuse occurred because even though the statute may have expired in one state it could still be good in another state, even if it only happened there once.

There is a handful of states that have an extended statute of limitation based on a fixed number of years. You have so many years from the time you reach the age of majority or the time that the crime occurs. Almost all states are going to hold the statute for minors and the clock won't start ticking until they reach of age of majority, which is generally 18. Also of the states that have a fixed number of years, the longest is Connecticut which says you can do it 32 years from the age of majority—by the time someone reaches age 50.

Out of states that have a fixed number of years, that's the longest, but even in Connecticut, we've seen that that this isn't enough because there is a case going on right now in which somebody bought an old house, were cleaning out the attic, and found a box in the attic that had a whole bunch of 8 mm films, and they were full of child pornography that were taken by a doctor that worked at the local hospital. The doctor is now deceased but those children who were being sexually abused in those films, are still alive and now that they know someone will believe them, now that they're dealing with all of these issues that have come back because they know this has happened, they are outside the statute of limitation to bring a claim against the hospital for what was happening to them there.

Other states will have a discovery rule which says that your cause of action is going to accrue when you know the crime occurred. This comes up in cases dealing with repressed memory. Really it's disassociation. It is a defense mechanism that the brain has when you're going through something so traumatic it will get blocked out. It will come back. It might come back years later, but whenever it is, that is when the clock starts ticking. I've met lots of people who have gone through this experience—they had no memory of it, and often times they've confronted the perpetrator, who has later admitted it and corroborated their story, so we know that this really happened.

Also, some states say that the statutes of limitations will start to run when you make that realization, and still other states have what we call a "delayed discovery rule," and this says that the clock's not going to start ticking until you know that the injury that you're suffering from was caused by the sexual abuse. In my experience this has proven to be very important because for some victims it may be months during which the victims didn't block out those memories; they always knew that the abuse happened, but they didn't appreciate that they were harmed by it.

This is one of the reasons why we have a lot of work to do in terms of education for people to understand it. If you are an eight or ten-year old boy and you have just been molested and someone asks you if you are okay you might think, 'okay, that was weird, that was kind of gross, but I'm alive, I'm breathing, I'm not bleeding, I don't have any broken bones—I guess I'm okay.' But oftentimes the harm that they've suffered doesn't begin to manifest itself until years later then they are adults. We know that, in general survivors of child sexual abuse that are boys tend to act out, and girls tend to act in.

Boy survivors of sexual abuse might have problems with drugs or alcohol or sex addiction or a gambling addiction or can't keep a job or can't stay in a relationship. Whatever problem they're having, it usually happens when they're an adult and it usually has to happen a couple of times. You have to go through a couple of cycles before you say, "you know, I keep having a problem with 'X'(whatever that may be), let me go get some help for that." So they go to see a therapist and the therapist says, "well, I think these things are happening as a result

of the abuse you suffered as a child,” and the victim says, “well wait a minute—I always knew Uncle Billy did that stuff but to me but I never knew that all this stuff happened as a result.” When you make that connection in so many states, that’s when the cause of action accrues, and in pinpointing that is really important.

I think that as we try to change policies, legislators have a difficult time. They think, “you were 16 years old when this happened—what do you mean you didn’t know it was wrong?” and for most people the vision we have of child sexual abuse is, you know, you get grabbed by a stranger and dragged in an alley. You do that to most kids and they will know immediately this was wrong and I need to tell someone, but the fact of the matter is, the child sexual abuse doesn’t usually happen like that. It’s someone that the child knows and trusts. The perpetrator has gone through an extensive grooming process. They make it about love and affection that this kid is special, and really it’s a total mind game and afterwards the victim isn’t prepared to say this was wrong but they’re just really confused and why would someone who cares about them so much hurt them.

So, that realization doesn’t come until later and it’s important that we recognize that and that’s why we have to create these special exceptions in the law. The other problem I think that legislators have is that they just don’t want to acknowledge what’s happening in our society. It’s very difficult. It’s so much easier to say that it’s an anomaly, or they’ll point to the fact that so many survivors have other problems, such as mental health or substance abuse issues. Even though these issues are a result of the child sexual abuse, many people will point to them and say that this undermines the victim’s reducibility. People say, “We can’t believe these people; they’re crazy, they’re drug addicts. so that’s a reason why we shouldn’t believe them.” It’s always easier and it makes them more comfortable to think we don’t have to believe these folks rather than face the horrible, horrible truth about what’s going on with kids.

In 2007, the Virginia Department of Health did a study that said that 25% of Virginians were sexually abused as children, and that is a number that’s consistent with what we see in other research. Other research says that it’s about 27% for girls, and about 21 or 22% for boys. So, on average, a quarter of kids are being sexually abused and the number of legislators and elected officials that I’ve spoken with when I shared the statistic with them are absolutely incredulous. Really? Because they think that can’t be true because if that really was true everybody would be up in arms, you know? One, first they think all the victims would be talking about it, and two, they think if that was really happening somebody would do something about it. It’s like, well, why do you think I’m talking to you right now trying to get you to change something? We know that so many victims deal with issues of shame, fear of not being believed—there are so many reasons why they won’t come forward.

There was a doctor, Dr. Melvin Levine, who was the leading child learning specialist and pediatrician who was at Children’s Hospital in Boston for many

years then went to Duke in North Carolina and there were some allegations that he had sexually abused some of his patients and one of our members of our Bar Association, Carman Durso, had one of these clients and he was talking with another one of our members from North Carolina and he says, "I've got this case, I'm thinking about bringing it, what do you think? What's the law like in North Carolina?" She said, "Oh no, the law is too good here —I wouldn't bring this case here, but keep me posted on what you hear."

About a year later, a victim comes in to this other lawyer's office in North Carolina and starts telling his story and she says, "wait a minute, I know this case. This perpetrator was Dr. Melvin Levine." So, they joined together and had a press conference. They had five victims and they held a press conference, and they asked for more victims to come forward. Within six months over 50 victims came forward with allegations of abuse dating back to 1964, and for every victim that came forward they received calls from another ten who said it happened to me but I will never be able to testify or talk about it, or they got calls from parents who said it happened to my child and he told me and I didn't believe him, and those parents were racked with grief and guilt.

So, we know that these things happen and they've been happening for a long time and we've just sort of pulled back the covers to expose it and that's why it's so important to allow these cases to come forward because if there's one thing I've learned, it's that pedophiles don't retire. When even 30 years later a perpetrator is exposed and they're still alive, we find them 70 to 80 years old in walkers and wheelchairs continuing to molest kids. By allowing these old allegations to be brought in identifying perpetrators, we can keep kids safe today. That's why it's so important. You know, I've worked on this issue and sometimes we've been successful and sometimes we haven't, whether it was in the District of Columbia or Arizona or Virginia or here in New York. But it's a cause that we won't give up on and I think that once we get people to understand the science behind it, and why this is really a matter of justice for victims, and why it's important in keeping kids safe, then we'll have success much like we've had in Delaware. So that's my take on it. Thank you very much.

[applause]

PROFESSOR HAMILTON: Now we'll hear from Senator Karen Peterson, from Delaware. Delaware is one of two states that has passed a comprehensive window similar to the one suggested in the New York Times today. She's one of my personal heroes. She essentially gave up her entire legislative agenda for a number of years in order to protect the children of Delaware, and she has been involved in not only this groundbreaking movement but also some of the fallout that happens after you have this kind of legislation. So we'll hear from her now.

SENATOR KAREN PETERSON: Thank you very much, Marci. Thank you for inviting me to be here today. This is my second trip to Cardozo and it's starting to feel like home. I was asked to talk about where we are in Delaware because it

isn't over yet. Just when we thought it was safe to go in the waters it wasn't. But, I do want to back up a little bit and kind of take you through the history. Back in 2002 when I was first elected to the Delaware Senate, this issue really wasn't on my radar screen. It wasn't because nobody talked about it—it just wasn't something that I was concerned about. I don't think I at the time knew anybody who had been molested as a child. I found out I was wrong after I became involved, but it wasn't something that was high up on my list of things to do.

That all changed in 2006 when another member of the Delaware legislature introduced a bill and asked me if I would cosponsor it, and I said, sure; I would be glad to do that, and I went to the committee hearings on the bill and victims showed up—lots of victims showed up. I sat in the back of the hearing room and listened to their testimony and when I was all finished I thought, “Oh my God; who knew? Who knew how many people were being sexually abused as children?” I certainly didn't, and the stories that I heard were just enough that they haunted me and they haunted me for a long time. Well, the bill that we had in 2006, by the time the diocese of Wilmington was finished offering amendments, the only thing left was the title of the bill. Pretty much everything else had been removed.

By the final night of our session, when we had one more shot at it, I thought, “you know, let's let it go. This bill really doesn't do anything. It's just window dressing. We're just pretending to do something.” So, we let the bill die on June 30th. I then pledged to bring a bill back the next year, start it over in the Senate, and it would be a bill that I and some other folks interested in this issue would write. Now in Delaware, we had a two year statute of limitations. That means two years from the date of the abuse, and as we know, the average age of kids when they are abused is nine, so in Delaware you were expected by the time you turned 11 to a) realize the harm, b) go find yourself a lawyer, and c) get yourself into court. That was true of both the civil side and the criminal side. Now we had changed the criminal side back in 2003 or 2004. We dealt with that and we tried to do it retroactively and, of course, the day our governor signed that bill was the same day that the United States Supreme Court said that you can't do that; that is, you can't do it retroactively for the criminal piece but, anyways, going forward we did abolish the statutes of limitations.

So, on the civil side, though, we found that we could do that—we could retroactively revive these cases. And so in 2007, Representative Debbie Hudson and I, as well as around 38 other co-sponsors from the legislature, introduced what became known as the Child Victims Act. What the bill did was remove the statute of limitations going forward and, secondly, open a two year window for people who were previously barred from bringing their cases to come forward and file those cases.

It was interesting, Professor Hamilton was there for each of the debates and I believe that without her and without Father Tom Doyle we probably wouldn't have this law in Delaware. They were just so incredibly convincing and persuasive that

they must have pushed it over the top. It was interesting because in the Senate I was concerned that there was going to be some opposition coming mostly from the Dioceses of Wilmington, and so we got to the end of the debate and professor Hamilton had testified, and we got our victims up there, and the person that I thought was going to lead the opposition stood up to speak and said, "I've listened to all the debate, and listened closely, and I intend to support this bill because I was a victim of child sexual abuse at the age of six." Everybody's jaws dropped. Who knew? It was the first time he had ever said it out loud and he was in his mid-50s. Once Senator John Still said that, I thought we're good to go.

Now the Dioceses of Wilmington made some half-hearted attempts to amend the bill in the Senate but I know from looking at the private minutes from their Wednesday meetings that their real battle was going to be in the House of Representatives. That's where they planned to kill the bill. They said let it slide through the Senate and when it gets to the house we'll kill it. At the same time, of course, in the catholic newspaper every week, they had articles about, supporting a change in the statute of limitations. Of course, when push came to shove, what they meant was changing it from two years to three or something like that.

When we got over to the house, the Dioceses of Wilmington had five amendments ready and, again, those amendments would've taken us back to title only. It just gutted everything. We were able, due to some real assertive folks on our team, to get the word out that we didn't want any amendments. The mantra was "no amendments" because we knew that if we let one amendment in then the floodgates would open and the dioceses would put all of their amendments on the table. So, we were successful in beating back all of the amendments in the house and the Bill passed both chambers unanimously. So, our bill went into effect July of 2007 and that's when the window opened.

In the next two years, there were roughly 177 cases filed under the bill. There were immediately some constitutional challenges. We prevailed in those. There is one still pending, though, in the Delaware Supreme Court. I think we're going to be successful in that and we're keeping our fingers crossed. But over those cases about 150 of them were against the Catholic church, either parishes, the Dioceses, or orders—the oblates, the Caputians and the Norbertines—there were some filed against Boy Scouts, Big Brothers—a variety of cases, but the vast majority were against the Catholic church.

The window closed in July of 2009. Shortly after that once we knew how many cases there were, the Dioceses of Wilmington ran into bankruptcy court, to file for Chapter 11 protection. Now that came as a big shock in Delaware. The headlines were, you know, "Dioceses Declares Bankruptcy," but I knew from reading Professor Hamilton's articles that that's what all the Dioceses do in the country: they run to Chapter 11 protection and, of course, they couch it in terms of "we want to make sure there is enough money for all the victims; we want to make sure that we don't run short of money so everybody gets their fair share," which we

know is not true at all. So, they ran and hid in Chapter 11 and throughout 2010 that's where the cases sat. None of them could go forward to trial until the judge, Judge Sontchi [phonetic], decided that ten of the cases could go forward to trial against the parishes only, though. So, we had a case filed against the priest, the parish, and the Diocese.

The Dioceses cases couldn't go forward but the cases against the parish could. The first case to go to trial was John Vai vs. St. Elizabeth's Parish. Father DeLuca was the priest. Father DeLuca molested probably hundreds of kids; we'll never know exactly how many, but a good number of them did come forward. Father DeLuca, who is now Frances DeLuca, is now 78 years old. He just went to prison for molesting his nephew, so I agree; they never stop. Here he is 78 years old, left the Dioceses of Wilmington in disgrace, has been laicized by the church, and is still molesting. He did do some time in jail for that.

Anyway, with regard to the Vai case, in the end, the court awarded \$30 million in compensatory damages against Father DeLuca and another \$30 million in punitive damages against Father DeLuca who has probably two cents to his name, so a total of \$60 million against the parish itself. Now, we had a standard of gross negligence. They had to prove gross negligence to, you know, get anything, and they were able to prove that, and St. Elizabeth assessed compensatory damages at \$3 million and punitive damages in an amount of \$1. So, once that happened, St. Elizabeth's parish became concerned that they were going to have to sell their church and their school to pay the claims. The Dioceses pretty much had thrown them under the bus during this. They had told St. Elizabeth's' in the beginning, "don't worry about it, we've got your backs, we'll make sure, you know, you're taken care of through the trial, we'll be there right with you," and that was good until August of last year when the Dioceses said, "forget that, you're on your own," and gave them no more assistance at all in the trial. So, they were out there on their own.

But once the word got out that St. Elizabeth's was probably going to have to sell their school and their parish and the convent and the rectory and all this, this was the opportunity for the Dioceses to pounce. What they couldn't get done during the debate on the bill they started to do after the decision came down in the Vai case, and what they did was they started putting out the word to the parishes who were being sued, and there were 26 of them, that you, too, can lose your church and your school. They basically said that if this bill is allowed to remain intact, chances are all the churches in the Dioceses will be up for sale and all the schools.

This then resulted in parishes starting to preach from the altar. Pastors got up and preached from the altar that we had to turn back this bill; we had to go back and amend it. We had to go back and put caps on damages. We had to go back and cover public school kids; it wasn't fair that the Catholic schools were covered but the public schools weren't. That wasn't true; public schools were always

covered. In fact, 14 of the cases are against public schools. It didn't stop them from spreading those kinds of rumors. There was a rumor that we put caps on public schools.

You know, once we showed them that yes, public schools were covered, then they changed their story and they said, oh yeah, but there are caps on those damages— also not true. That didn't stop pastors from several of the large parishes from getting up and preaching from the altar over the past month that this isn't fair, this anti-Catholic— even though I'm Catholic and I'm the prime sponsor of the bill. It didn't stop them from saying that this is anti-Catholic, and that it's not fair to the Catholics because public schools aren't covered, and all that.

And so what they started doing was on Sunday mornings they handed out fliers at the churches— I have a little collection of them here—and they say basically save our school, save our church, do you realize that the Child Victims Act only applies to the Catholic church and nobody else. There really is no shame in these. They were handing them out at the doorways to the church, they had petitions going, they had a big community meeting or a big meeting at one of the churches to fight the law, and here is how they were going to fight it. One of Professor Hamilton's favorite people on the Delaware General Assembly is a fellow by the name of Greg Lavelle. This is his picture in case you forgot what he looks like.

[laughter]

When Greg Lavelle decided to introduce some bills to do what the Dioceses wanted done I accused him in the newspaper of carrying water for the Dioceses of Wilmington. I got a little bit of hate mail on that, but I was able to prove that what I said was true. Anyways he introduced three bills. The first one would retroactively attempt to cap damages retroactive to July of 2007 and limit damages in any case to \$250,000. The second bill would say public schools are covered which they, of course, are already are, but it didn't stop him from saying they weren't, and the third one would have prevented victims from getting prejudgment interest on their claims. Okay, because these claims go back some 40 years in prejudgment interest in the Vai case could have been close to \$7 million, not that that was ever awarded, because it wasn't.

So, Greg Lavelle to the rescue on his white horse says I'm going to save the Dioceses from this bastardly law. Now, Greg Lavelle was one of the prime sponsors of the Child Victims Act. People would write to me because the church tried to get parishioners to write to their legislators and tell them to turn back this law or amend it, and that Greg Lavelle is the only one who is on our side. So what I would do is I would write back to the folks and I pasted a copy of the bill itself and highlighted his name as one of the prime sponsors and then I attached a picture from the bill signing of him standing between Professor Hamilton and me right behind the Governor trying to take credit for the bill. But now he wants to be the one to save us from the law. So, his three bills were going to be the three bills to

save all the Catholic churches in Delaware. That all kind of came to a halt on February 2nd, when an agreement was reached in the bankruptcy court.

The Dioceses finally came to the table with some real money and so on February 2nd it was announced that an agreement or settlement had been reached, though it still has to be approved by the bankruptcy court. The Dioceses put \$77.4 million on the table to be divided among 150 victims. Now not everybody will get the same amount. Depending on the severity of the abuse, there will be a formula worked out as to who gets how much. So, that kind of let the air out of Lavelle's tires in terms of, you know, coming back to the General Assembly. Not that he won't do it; he's running for Governor and so, you know, he might come back just for a couple more headlines so he can stir up the Catholic constituency, but we have to be prepared to shoot those bills down when they come. First of all, my understanding is that you can't retroactively place a cap on an invested rate. He insists that you can but, anyway, we'll have to battle that out in the legislature.

So, at this point, we stopped getting all the hate mail from the parishioners who had been told that we were anti-Catholic. That all went away. Once they realized that the church wasn't going to be sold and the school wasn't going to be sold, they stopped. Note that none of them mentioned anything about the victims, you know, about gee, we're really sorry about that. All they cared about was, you know, my mother and father raised money to build our church. One was, don't you know my daughter is going schedule to be married at St. Catherine's and now you're going to sell it, you know? All this me, me, me stuff. Forget the victims.

But, anyway, the only thing we have left at this point pending are the cases against Boy Scouts, Girl Scouts, whatever, and the ones against the orders. The orders did not come to the table. The Oblates, the Caputians, the Norbertines. I don't know what they're thinking, but they didn't come to the table and so that will be the next round of discussions, but as for now all is quiet on the Western front in Delaware [laughter], we think.

One thing that we didn't realize at the time we passed the Child Victims Act and that was that doctors are covered under a whole separate section of law, and so we did fix that, I guess, two years ago and went back and amended that. It's a good thing we did because Delaware just identified one of the worst serial child molesters in the country, Dr. Earl Bradley, and he took videos so that should be nailed down pretty tight. He molested over 120 children, some as young as three months, but he videotaped all of it, so, anyway, we have that law and then we have our law, and I think together we should be able to round up most of the guilty parties. With that I will stop and save more for questions.

[applause]

PROFESSOR HAMILTON: Thank you very much. We're very fortunate today as well to have a view point from the district attorney's trenches. There has been historically some friction as Jeff mentioned between prosecutors in this arena and civil attorneys and increasingly I think there is more of a willingness to work

together and understand each actually has the same goal in mind. When the 2005 Grand Jury report came out from Philadelphia, which was involving the Philadelphia archdiocese, I was actually a consultant on that and, you know, one of the big debates in the office was whether or not the district attorney's office, the prosecutor, would recommend a change in the civil statutes of limitations. and some of the—died in the wool, you know, people who had been there for decades said we don't touch civil side, but in the end Lynn Abraham, who was the District Attorney, said, no.

We have a real problem here because our criminal statutes of limitations have been so short we can't retroactively change them because of a case at the Supreme Court, so we need the civil side. If we don't get these civil lawsuits, we're not going to find out about the perpetrators who were going to have new victims, who aren't yet able to come forward. So, that office recommended it in 2005 and then released it 2011. So, I'll be very interested to hear what Robert Hettleman has to say. He is the real life version of SVU and is the Chief of the Child Abuse unit in the New York County District Attorney's Office. Thanks.

[applause]

MR. ROBERT HETTLEMAN: Thank you so much, Professor Hamilton, for inviting me. It's a privilege to be on this panel of distinguished speakers who are devoting lives or portions of their lives and their jobs to work to save children and to help our society be a safer and a healthier one. I want you guys all just to think back for a second to when you were six years old, nine years old, ten years old, and think about who it was that took care of you and taught you right from wrong and gave you your set of values. I think that people who have made it to the stage where you are—as very successful law students—we take for granted somewhat the supportive environment imparted by a parent, a teacher, a grandmother, or whoever raised you, or a clergy member. These people set certain rules for you and set certain boundaries.

At the age of six or seven, you probably knew it was wrong to steal from other people. At the age of eight or nine, you probably knew you shouldn't go somewhere with a stranger, and you probably got that from, again, a mom, a dad, and grandmother, clergy, priest, a rabbi—whatever it may be— but think what would happen if that person in control and in power over you set a different set of rules for you, or set a different set of boundaries. Instead of just giving you a hug and a kiss and reading you a story when they tucked you in at night, when you were six or seven, they started to run their hand a little bit lower than on your back and went somewhere else, and instead of kissing you on the cheek they started to kiss you on the mouth, and instead of saying to you, hey, you should always be honest; you should always tell the truth, they said, hey, mommy, daddy, and daughters have secrets and we've always got secrets and they're just to be kept between you and me.

Now people ask victims of child abuse when they're older why didn't you tell? Of course, as people have already mentioned, you knew by the time you were a teenager that something was wrong with that. Well, if everything in your brain that you've been programmed to be a certain way was programmed a different way, you would probably feel very differently, and by the statistics there is probably people in this very room who were abused as children and it is far more than just priests and rabbi's and doctors and scout leaders. It is parents. It is almost universally, again, the stranger cases are rare and people do know that there is something wrong with that, but the vast majority of cases that we handle in the District Attorney's office are kids who are abused by close family members, mom's boyfriend, uncles, and people that they know. So just think about that as you think about statutes of limitations and about criminal prosecutions.

I am the Chief of the New York County District Attorney's office, Child Abuse Unit. I've been in the DA's office about 14 years, and doing child abuse for about the last eight years. We handle criminal cases in Manhattan only, although I work closely with my counterparts in the other boroughs. We also handle it relatively similarly. We handle cases of physical abuse, sexual abuse, and of young kids. In Manhattan, we handle cases in which kids are 13 years old or younger, or alternatively cases in which the abuse happened when they were 13 or younger. We deal with physical abuse, sexual abuse, child pornography, child homicides, kidnapping, internet crimes, which are becoming such a source of difficulty for kids everywhere, kids and adults, I should say.

I'm happy that you're having a forum like this and I hope that everybody here, whether you're on the Journal or whether you're just sparked by something you read or saw, that you guys do take some time, whether you become lawyers in public service, government work, advocacy for children, advocacy for women, or victims of any kind, or whether you may go into a law firm and work in the private sector, or go to Wall Street, that you at least take some time out of your life to dedicate yourself to trying to make our world a little bit of a better place for children, a little bit of a safer place for children, and a little bit of a better society where children can understand that this kind of abuse is wrong and that they can report it comfortably and be believed.

As Professor Hamilton said, when a courthouse is closed to an entire group of victims, there's something very, very wrong, and that's true in the criminal sphere as well. Back until the '70's and 80's, a woman could not technically be raped by her husband. A woman could not be technically be raped unless she put up honest and earnest resistance to the crime. So, if somebody put a gun to your head and said, you'll do what I want, and you don't try to punch the guy in the face or kick the guy in the nuts, it can't be rape.

Well, they changed these laws over time because they recognized that this type of crime requires a slightly different set of laws and you can't use the outdated values that existed when the laws were initially passed. This is true of child abuse

as well. As Jeff said, we've recognized that this is a very different category of cases. Even in the criminal sphere, kids do not disclose abuse. They simply don't. You can have the best relationship with your child as a mother, as a father, as an uncle, as a sister, as a brother, and that child is not going to come to you and say, "hey mommy, guess what Uncle Joe did to me last night? Let me, a nine-year old talk about sex and my private parts." If I asked any of you right now to stand up and tell me about your last sexual experience in great detail, I don't think you'd want to get up and do that, and you're in, I presume your 20's. Imagine if you were nine and you didn't even know what those parts of the body quite are yet and what they do.

So, kids don't disclose for a variety of reasons and due to a variety of pressures that they get from their parent, from society, from their neighborhood, from an affinity group, the local church, the local community. They can't disclose this abuse, and as such we have to make sure that we create a society were they are able to do it [when they are ready]. Also, the abuse is usually not a one-time crime—it's not a stranger in an alley who raped somebody violently at gunpoint. It is grooming. It is somebody who over time continues to abuse and abuse and abuse and warp the child's mind so much that even when later the disclosure comes when the child is 13 or 15 or 20 or 30, a nine-year old doesn't keep a diary, on this date, daddy did "x" to me, and on that date, daddy did "y" to me.

Now, in criminal law, generally we have to charge [someone for having committed a crime on] a specific date. That is, in a murder case, in a robbery case, that on February 15, 2011, this person robbed me, raped me—whatever. You can't do that in a child abuse case when you're looking ten years into the past and abuse that happened so often that, of course, that a child is going to have no idea about any particular specific event. So, what I'm here to talk a tiny bit about is the criminal side of things and how the laws have improved a little bit, but also why we have to support the bills that try to make them better.

Before 1996, so 15 years ago, the statutes of limitations for sex crimes and child abuse crimes w[ere] the same as for virtually any crime, [f]ive years from the date of the commission of the crime on a felony, two years on a misdemeanor. It doesn't matter what the crime is. In 1996, New York became a state that along with others[,] as Jeff described[,] that said you have until the age of majority. You have until you're 18 plus the statutes of limitations if it's a child abuse crime, sexual abuse, child pornography, or incest. So, if a child turns 18 then the statute of limitations would kick in[, and] you have five more years. [So, if the abuse occurred in 1997 and the child—I'm not going to do the math either and I'm not even as sick as Jeff is.]

[laughter]

The point is, you had until you were 23 to disclose the abuse unless, and this is in our statute of limitations, you have disclosed it to law enforcement. So, once it [has] been disclosed to the police or ACS, the Administration for Children's

Services, or any legal authorities, then the statute of limitations, the five years, begins to run. New York State abolished the statutes of limitations in criminal cases for certain types of cases. So, while almost all crimes have the five or two years statute that I mentioned, there has never been a statu[t]e of limitations for murder. The thought has always been if you catch a murderer 30 years later, it's the most serious crime. The harm couldn't be more than the loss of a life. There is never a statute of limitations. You can always prosecute somebody for murder.

Well, in 2008, they added a few more crimes, [such as] rape in the first degree, [a] criminal sexual act, which is oral or anal sex in the first degree, and course of sexual conduct against a child in the first degree. These are the highest level of sex crimes and child abuse crimes. Some of the lower level crimes are not covered, but these highest[-] level crimes are covered, and as of 2008, there is no statute of limitations criminally for us to bring charges. We can do that at any time. The other thing I'll say that you can see [is how] criminal law has recognized the difference of these cases is the last crime I just mentioned[,] which is course of sexual conduct against a child. So, as I said, normally we have to bring a charge based on a particular date. Dude sold drugs on the corner February 1, 2010. We have five years from then [to bring a charge]. If we can't pinpoint a date with enough sufficiency, it's considered not enough notice for the defendant to be able to defend his actions. If you can't tell me what date I'm charged with a crime, how am I supposed to be able to check whether I was in Peru that day or whether I was at work that day[.] You've got to pinpoint it for me.

In the late 90's, they [][added] crimes called [“]course of sexual conduct[”] against children, and they said that if the abuse occurred on multiple occasions[,] and if it lasted longer than three months, so a minimum of three months but a maximum of however long, we don't have to pick a date. All we[need] to show is that the acts occurred over time, that there were multiple acts by the same abuser, and that it constituted a course of conduct that lasted at least three months. So, now when a child comes to us and we can credibly prove that the abuse occurred from age 6 to age 9[,] [it is now not necessary if] they can't tell the date that it happened, the date that it started, the date that it ended, [or] they can't remember any specific July 4th, my birthday, [or]pinpoint a particular date.

We can still charge that conduct[,] and the reason I highlight that for you is[,] as Jeff said[,] this is a different type of crime[,] and the legislature over the last 15 to 17 years has been forced to recognize this and make changes. I liken statute of limitations on the civil or criminal side to be essentially one of the civil rights issues of our day. When you look back ten years from now, no matter which bill gets passed on which day and which state, I think [it will happen in ten, fifteen years,] well I hope five to ten years from now[,] but maybe 10 or 15, given the dysfunction of all of our legislatures[.]

[laughter]

Nothing personal [because] I don't know Delaware, but we will look back and say, wow, how did we not have this back then? This is like segregated schools, okay? Some day it's going to become clear as more and more people speak out that the abuse is much more pervasive than anybody understood it to be[,] and that there needs to be a remedy. So, I have a slightly different perspective than most of the panelists. I work every single day not with the [forty] and [fifty] and [sixty-]year old survivors of abuse that occurred a long time ago. I spend my day with seven-year olds, nine-year olds, [eleven]-year olds, [thirteen]-year olds, [fifteen]-year olds who it has happened to very recently, and we support the Markey bill that I think is in some of the materials or has been discussed that would extend the statute of limitations in criminal cases for another few years and would make changes to the statutes of limitation in civil cases.

We want to work with [and help] anybody we can in the area of protecting kids[,] mak[ing] kids stronger, [and] help[ing] kids survive this and grow older. There is some sense that kids don't want to report it, particularly young boys[,] because they feel that [they are] going to have a scarlet letter over [their] head. Everyone is going to know by looking at me that I was abused[,] and that must mean that I'm gay or perverted or this or that or the other. I meet some of the same kids that I've worked with [previously] or that others have worked with five years later, ten years later, and you know what? They look just like us, they have successful lives, [and] they have jobs[.]now[.] [O]f course, there are some who are deeply, deeply affected and deeply debilitated by what happened to them, but it doesn't have to be that way.

So, again, I encourage all of you to spend some of your law degree [and] your professional career helping some organization, whether it's civil lawsuits that help bring the truth to light, criminal prosecution or defense [work] that help people deal with whatever situations have come up, or whether it's an advocacy organization that just helps children get a referral to a counseling service or [place] that can help them[.] I encourage you to do it[,] and what [is] [also] important on the other side of statute of limitations, is finding a way to allow children to report the abuse now so that we don't have to have to have a statute of limitations problem [and] kids [will be aware of] the ad campaigns we do in schools and on subways. If something happens to you, it is wrong. If something feels wrong to you, it is wrong[,] and [it is important to] be able to disclose to somebody now so that we don't have to worry about it when you're [fifty] or [sixty] years old. Thanks so much.

[applause]

PROFESSOR HAMILTON: Thanks very much, and I'm so glad that Bob is here to remind us that this is an issue that affects all children, and the vast majority of children with these issues are in the family. It's a smaller group that's coming out of the outside the family circumstances. Next, I'd like to ask Dr. Asher Lipner to come forward[,] and Mike Armstrong will wrap up with the New York situation

at the end. Dr. Lipner is one of the founding folks for the Jewish Board of Advocates for Children. This has been a groundbreaking organization that has made it very clear that it's not just one church, it's not one organization, it's not one part society that has the issue[,] but it spans across the entire culture, so . . .

DR. ASHER LIPNER: Thank you, Marci, and thank you to all the speakers. It's an honor and a privilege to be here today with people who I admire for being heroes and really mavericks in trying to change society. It took a lot of [research]; I know, on Marci's part, [to try] many different avenues to help kids and to help this great injustice. The statute of limitations was probably [not] the first thing that she tried, but it became evident pretty clearly [and] quickly, that that was holding it back, [and as a result, as someone previously said,] the courtrooms have been locked.

[I have] [j]ust one comment about the last speaker, Bob [and] the idea that there is a flipside, that there [are] two issues. One, is the adult survivors who are still suffering and still want to come forward and often the perpetrators that they are going to report to either law enforcement or through a civil trial are still committing crimes against children today, and then [two,] the idea was to get children to be able to come forward now as kids. The two are actually connected because as a psychologist[, I work] with both adult survivors and child survivors.

One of the things that stop children is that children internalize not only the values and the boundaries that are taught to them by their close caretakers, but they also internalize society's values. When it becomes accepted and known that adults are coming forward and saying this is what happened to me when I was a child[,] and the system, government and the courts are taking them seriously, it trickles down and the children actually get affected. They now live in a society where this is considered wrong[,] and it's so wrong that even if you grow up people are still going to care about it and then it will actually have an impact even for the children.

I'm working on [a] case right now. I was actually subpoenaed[,] and I'm giving a deposition tomorrow morning here in the city about a big case in the news, a rabbi who molested children for over 30 years in Brooklyn. His name is Rabbi Coco [phonetic][,] and the people who first broke the story [did so by] newspaper. [A]s Marci said, the press is often not the best way to be able to tell your story and get something done to protect children because there [are] all kinds of legal questions about being sued[.] [T]here is also communal stigma, but one great person did come forward and did an article [and gave] an interview to *New York Magazine*. The title of the article was "On the Rabbi's Knee: Does the Orthodox Jewish Community Have a Catholic Priest Problem?", which we certainly do because it's not a Catholic priest problem; sexual abuse knows no religion.

You know, it is interesting that in Delaware such a high majority of the cases that are being prosecuted are from the Catholic Church. I would say that one of the biggest parts[,] and I [say] this all the time[,] the religious aspect to this problem is not in the abuse; it's in the cover up. It's in the institutionalized organizational

attempt to sweep the problem under the carpet, what Marci calls the scandal law that every religion has, and that does occur in public schools as well and in private schools that are nonsectarian. However, religion has that ability to influence people in their thinking and in their loyalty [which is] why so many cases have not come forward [and] have not been addressed in any way in the Catholic Church [or] Orthodox Jewish community.

So, in this case[,] these adults came forward, but because of the statute of limitations no arrests could be made[,] no lawsuit[s] could be [claimed], and the rabbi was still teaching. A[n SVU] detective from Brooklyn went and, [I am unsure if she is allowed to do this, interviewed every kid that she could find that this rabbi had taught. [S]he was able to find some younger kids that had been molested. They came forward[,] and the rabbi was prosecuted.

However, this is where the catch 22 comes. The ones who are above the age of 23, the victims who had come forward—I know them; a couple of them are friends of mine[, and] they couldn't do anything because of the statute of limitations. The little kids who came forward were considered not good witnesses, and even though they said they could testify on a videotape, the rabbi walked; he got a plea deal with no jail time[,] and he is still walking the streets[.] [M]any people don't even believe it was true because all he got was probation, but I'm testifying in the civil suit of these children[,] which hopefully will hold the school accountable[.] [T]hey won't have to prove that it happened because they did get the guilty plea. That is one way in which the civil and the prosecuting lawyers work together very well[.] [F]or the civil case to go forward[,] it's very, very helpful to get a criminal conviction or a guilty plea.

On the other hand, there were some advocates who were upset with the lawyers because they had accepted the guilty plea[,] thinking we can have a good lawsuit[, but] the plea deal was so weak that he didn't do a day jail. So, maybe they were a little bit influenced in wanting to go after the institution, and as an advocate myself, I could see that they may not only be a financial consideration [for] the lawyers, but it's also an idealistic one because, you know, you put one molester behind bars and you save "x" amount of children. You change the policies of a major institution by holding them accountable for millions of dollars. How many more molesters in the future will they not let get away with it? So, there's a balance[,] and I think it's very good to see the two work together.

Okay, about the reason why law has to be the way to stop child abuse[:] I'm also a rabbi and the - - says that Jews are supposed to pray for the government even though historically we've been persecuted by many governments. We are supposed to pray for the piece of the government because[,] without the government[,] which means the rule of law[,] citizens would kill each other and swallow each other whole. I never understood this[,] as much as I do today[,] after reading some of the most recent articles about what's happening in Philadelphia. Because we all tend to think that some of these crimes can't happen, it can't be

covered up because we can trust religious institutions. We can trust the media to expose it. What's happened is we realize that that's not true. At the end of the day, if not law[,] kids are going to be hurt. We need the government to step in like it did in Delaware and to say we are taking this out of the realm of community [and] religious institutions. The problem is that[,] historically[,] many lawyers as well as media people have treated these religious institutions or other institutions like public schools with kid's gloves but especially religious institutions.

There was a DA in West[c]hester, I believe, who[,] after the scandal broke in Boston[,] with the [a]rch[d]iocese being held accountable and having to resign[,] wanted to get information about cases in New York in the Catholic church[.] [T]hey keep very good records at church [and] had documents of all the allegations[,] but they didn't want to give it to the DA[.] [S]o[,] I was just reading [the] book, *Betrayal*[,] by the staff of the Boston globe[.] [I]t was about the history of how the media did expose [the church], [and] the DA's and many civil lawyers were considered tra[it]ors to their faith. They were Catholics, in Boston, and they were considered tra[it]ors to the faith for prosecuting the church.

It eventually got to the point where[,] [at] a meeting of all the DA's in New York and the lawyers for the Catholic church[,] the Catholic church said to them[, that they're go[ing to] make [their] own panel[,] and [they're going to] have [their own] panel go through all the allegations and cases[,] which [they] think are true and have merit[.] [A]fterwards, they will give [the DAs} the records but those that [they] feel are probably in [their] opinion not that serious, not that real, [will not be given] to [the DAs][,] but [they shouldn't] worry because th[e Church] panel is going to have judges and lawyers and the most respected members in the community[.] [O]ne of the DA's said[:] with all due respect[,] I don't care if Jesus Christ himself is on that panel.

[laughter]

We don't tell you how to do your job; don't tell us how to do our job. We're the ones who can prosecute[,] and who can carry out the law[.] [T]his has to be dealt with through law. So, I would just like to reiterate what the speaker before said that[,] as law students keep in mind that this is what law is all about[,] [it is important to] protect and bring justice for those who have the least voice, the least power, [and are the] most vulnerable people[,] children.

Just one last thing I will talk about is that[,] as a psychologist[,] what I see[,] and many people have said already is that there are many reasons why people don't come forward. First of all, even adults who are raped[,] and rape is one of the most underreported crimes[,] even adults because there is shame, stigma, [and] confusion [ask:] will I be blamed? Sometimes in society people do tend to blame the victim. No[one] gets blamed if they're mugged[,] but when it comes to sexual crimes[,] there is confusion about what cause[d] it, and so even adults will be ashamed to come forward[.] [S]ometimes[,] not only does the damage not get known until years later, but the damage will only start years later.

I have patients who are adults [and] who were living a difficult life[.] [These are] victims of terrible trauma, rape[d] as children, but they were getting by[,] and at the age when their child became the age that they were molested, that's when they had break downs and became suicidal. So, I compare the statute of limitations question with child abuse to similar cases of torts like cigarette smoking; you see on television all these ads for mesothelioma. [T]hese diseases come out years later so you can't tell someone that you should have sued the tobacco industry when you were 20 years old because they were giving you something unhealthy to do[,] and they were damaging you because the damage only gets diagnosed many years later. In many cases of sexual trauma, the damage only occurs years later, so it's not only that people aren't aware of it, but even if they are aware[, that] this is bad for [them], it gets worse and worse. Different things trigger it. Let's say a person ends up getting into a bad marriage with an abusive spouse[,] and it's textbook. Psychologists can say that there is a significantly higher [chance] of a person who was molested as a child doing something like that [in the future], so these effects only happen years later[.] [This] has to be taken into account also in terms of how unjust it is not to let victims of sexual abuse have access to the justice system for a longer period of time. Thanks a lot.

[applause]

PROFESSOR HAMILTON: We'll now have Mike Armstrong who is going to finish up the panel. We're running a little bit late which is fine by me, but we'll wrap up at quarter 'til and we'll have time for a few questions. Mike has worked incredibly hard on this issue. In Marge Markey's office, assemblywoman Marge Markey's office, and he can give you the history [of the issue] in New York and then tell us maybe a little bit about the future.

MR. MIKE ARMSTRONG: Thank you, Marci. I guess the story I'm going to tell isn't as pleasant as the one that Senator Peterson told you because we're still very much in the process. The current law in New York[,] on the civil side[,] is [that the] statute of limitations extends for five years after the age of 18. The Child Victims Act of New York, which has been passed three times by the New York State Assembly, has not gone to the floor of the Senate since the first time it passed the Assembly in '06. [The Act] would extend that statute by five years, so it would be until the [victim] reaches the age of 28, but the Child Victims Act of New York has ended a one[-]year window which is the controversial part of the bill and [has] produced an enormous opposition.

The opposition has been almost 100% from one portion of the field [-] the Catholic Conference of New York. There has been some other scattered opposition over the years but the Catholic Conference is the only one that put real money and[, what I would call, a] real concerted marketing effort against the bill. We estimated after the 2010 legislative session that in 2009 and 2010 they spent approximately \$100,000 on lobbying [and marketing] activity to defeat the bill.

Let me just tell you quickly a little bit about the last two years because those were the years where it became serious legislation. I think Bob [or Jeff] referred to it as dysfunctional legislature. Albany is said to be the most dysfunctional [state legislature] in the country and that may or may not be true, but we live with what we've got[.] [Y]ou, as budding lawyers[,] have to face the laws and the rules of the game and try to work within them and deal with them and produce results, and that's what's happened with this bill. Assemblywoman Markey got involved in the issue about eight or nine years ago when a constituent came to her [with the issue.] [S]he began to educate herself about the subject and introduced and passed[,] almost [too] easily[,] I guess[,] the first version of the Child Victims Act in 2006.

The tradition in Albany has always been[,] with the divided legislature, republicans controlling one House and democrats controlling the other[.] [T]here were a plethora of bills that passed one House and were never going to pass the other[.] [T]he first time CVA came before the Assembly it [passed] overwhelming[ly] because the assumption was that there was no chance that it was going to pass in the Republican Senate in 2006. So, it went in 2006, 2007, and 2008 and passed the Assembly with slightly smaller margins [each year]. In 2009, however, [the] State Senate was very closely divided and that was the first year that aggressive lobbying against the bill took place.

That lobbying first took the form of an alternate bill, which would have extended the statute of limitations several years but had no window. The newspapers [who were] opponents of CVA began to marshal their media skills and Catholic newspapers around New York State began to write about these two bills[.] [Y]ou had the Markey bill on one hand[,] which was[,] as Senator Peterson pointed out, the anti-Catholic bill, and the Lopez bill [(]State Assemblyman, Vi[t]o Lopez [from Brooklyn] introduced the other bill[.]

[Shortly after this controversy came to be, t]he *New York Post* did a terrific story about a meeting that took place at the Bishop of Brooklyn's residence [with] the legislators from his Dioceses[,] which included Brooklyn and Queens, and Assemblywoman Markey[,] who is from Queens[.] [They] were threatened pretty directly that if the Markey bill passé[d][,] they could expect that there would be a closing of parishes, [a] closing of schools, etc. The fact is that[if you look] at the Catholic Dioceses both here and in all of New York [(]and probably other places as well[)], there has been a very steady retrenching of parishes and schools because of other factors and natural factors.

The Bishops of Brooklyn told several legislatures [(]who then reported it to the newspaper reporters[)] that if you vote for this bill[,] the first place we're going to go to decide which schools and which parishes close [is] your district. So that created a real firestorm. The bill didn't come to a vote that year because the State Senate went on a strike[,] as they call it. If you don't follow politics it probably didn't mean much to you, but there was a coup with several Democrats who decided to join up with the Republicans and let the Republicans end up run[ning]

the Senate, and the Democrats reacted with a decision that they were just going to suspend activities, so there was no Senate session.

The session ended without the bill going to the Assembly. 2010 came and the Catholic Conference hired probably one of the top lobbyists in Albany and spent[,] as I said[,] about \$100 million. I think that that was your figure, Marci. The fact is[,] they did a very aggressive lobbying campaign. The supporters of CVA in New York State had already been geared up and spent a lot of time calling on individual legislators[.] [T]hey did petition campaigns in the districts of the legislator[s] who wouldn't commit, both senators and assembly members. We did personal visits in Albany. We had several press conferences. [We had] very aggressive [support from] senate sponsor Senator Ruth [Hassell-Thompson] from [the] Bronx [and Westchester] [counties], who picked up the Senate side of the bill[.] [I]t all came to a head when we thought we were going to get the bill on the floor of the Senate this past June with a hearing before the Codes Committee.

The Senate [heard] an impassioned presentation [from] Senator [Hassell-Thompson]. Marci spoke very eloquently, and as the discussion went around the table among the Senators, we thought we had enough votes [to get to] to the floor of the Senate. [We didn't think] that it was necessarily going to win in the Senate but [that] it was going to go to the floor and [that] would have been a[n] historic first for the bill[.] [W]e already had the commitment of the assembly leadership that [if we] [got] the bill on the floor of the Senate[, they would bring] it to the floor of the Assembly and pass it immediately. This was an expectation that was trashed when the Republican Senator who we had counted on[,] who had been very sympathetic to the bill and had a family history that included child sexual abuse among members of his close family[,] announced that he was not going to support the bill at this critical moment, so we ended another legislative session without it.

This year [is a] new session [and a] new opportunity[.] We are looking forward to [it]—there's been change [here,] as everywhere. New York has had turnover of long[-]time legislators in both houses. The assemblywoman has made two tactical decisions during the 2009 and 2010 period violating the Senator's advice, [which was to not] amend the bill. In response to[,] or in an attempt to respond to[,] the opposition to the bill, two amendments were made[.] [B]oth of them [were] very specific, both of them [were] made because particular members of the legislature in the Senate and the Assembly said if you do this I will support the bill[.]

[O]ne change was to limit the length or the age that would apply to the victims during the window period. So, they put an age 50 year cap on it, 35 years past the current statute of limitations. The other [change] was to add public sector to the explicitly covered institutions and organizations that would be affected by the statute of limitations changes. The absolute rock solid commitments that were made to the Assemblywoman if she made those two amendments to the bill produced zero change in the support for the bill. It was a hard lesson to learn and

I'm not sure if it would have made any difference because of other considerations during the period, but this year she intends to reintroduce the original bill [with] no amendments and no changes and to [make] the pledge, no amendments to this bill, no matter what anybody says[.] The fact is this wasn't just capricious decisions; these were agonizing decisions, [the result of] a lot of discussion with survivors who had been very close, very helpful, and very active in the lobbying effort. I guess the concentration of them was in and around the metropolitan area, but [there] were people from all over New York State and from other states as well who came to Albany to help with the lobbying. So, they were agonizing decisions.

There were personal commitments that were made face[-]to[-]face between legislators and the pressure on individual legislators was such that [even with] amendments, some other excuse would be substituted [for not supporting the legislation]. [Basically, amendments] wouldn't change people's minds. So, with the Republican control in the Senate, the Assemblywoman is hopeful that her original Senate sponsor will pick up the bill again and become the prime sponsor in the Senate. The good news is that he's the chair of the Senate Coats committee. [W]e don't have a decision yet, but we're hopeful that he will say yes.

The other change that we're looking for in 2010, which I think is most interesting and most relevant is that we're going to concentrate on the economic impact of child sexual abuse on New York State government, institutions, and municipalities. In the course of the research that people have done on the bill—I have to read this because I can't remember this thing—[it was discovered that] victims of child sexual abuse are two and a half times as likely to abuse alcohol, four times as likely to be into drug addiction. A third of the abused will abuse their own children, [abused are] 11 times as likely to commit juvenile crime and three times as likely to commit adult crime. All of those things have a terrible personal and social consequence.

[There is also a consequence related to] the cost of government and, in New York[,], with a \$10 billion budget deficit[,], we think this message is one that will be received. We're planning to put together some time in the spring [for] a public hearing that will focus specifically on that issue and those who've done any research in this area probably would be familiar with some of the studies that have already been done on this subject.

Several states, Wisconsin, Minnesota, Michigan, and Georgia, have done studies specifically to determine the cost to government of sexual child abuse. A couple of them have been very specific about child sexual abuse. Most of them are about a broader area. [T]wo national studies have been done. One in 1996[,], which is sort of the ground[-]breaking analysis [in this field]. Jeff, you're probably familiar with the U.S. Justice Department report on the cost of crime to society and government. It's been—it was in '96 dollars, so you know what's happened to the dollar since then. The estimate was \$104 billion a year in 1996, the cost of child abuse.

That study showed \$56 billion of that \$104 billion was described as [related to] child sexual abuse, and we're talking about [the] cost of courts, cost of mental health services, cost of addiction services, hospitalizations, and sort of a[n] area called productivity costs which was their estimate of the cost to business and commerce and school operations from the adverse influence of people who are victimized as children. The most relevant—there are a couple of other international studies—Australia, which has a population of[,] I don't know, something in the neighborhood of 22 [m]illion[,] which is approximately the same [-] New York [h]as 19 [million] according to the 2010 Census. Canada has also done a study of this same subject and it's about 34 million, so we've been looking at those two international studies because they are similar in size to New York State. So, we're looking very much for if anybody's got any suggestions or anybody wants to volunteer to do some research for the assemblywoman on this subject, we'll take volunteers. You can do your public service that Bob suggested in advance. So, that's all. Thank you very much.

[applause]

PROFESSOR HAMILTON: Well, we went longer than we were supposed to. Thanks to all of you for staying. I'd like to open up for a few questions. I have students sitting here, I know, and I have to get to class to teach, but are there any questions from the audience? Yes?

MALE AUDIENCE MEMBER 1: I know [that none of your opposition could be here today] and I was just wondering if anyone [on the panel could] describe [the arguments that] some of [your] opposition [would make]?

PROFESSOR HAMILTON: Jeff, do you want to take that?

MR. DION: Sure. I think in all fairness, the things they would say is that statutes of limitation are there to protect people from old charges that they can't defend themselves on. How do you defend yourself against some[one] that claims something that you did 20 or 30 years ago? How do you have an alibi or get witnesses to disprove someone[?] [B]ut the fallacy of that is that it's the victim or the plaintiff bringing the case that has the burden of proof[.] [A]nd I think that they would also say from an organizational perspective that there needs to be some sort of finality from[,] as you look at risk management or how much money is something going to cost us[,] that you have to know that people can only go back so far to make claims. But oftentimes, if those organizations had insurance policies in place at the time, you know, they would be limited to their liability coverage in their insurance policy.

I think they always try and use bankruptcy as a scare tactic but throughout litigation most of the time, when you're suing someone, even suing an individual, unless they have an awful lot of assets, cases are resolved through the amount of available insurance coverage. Nobody is really looking to put people out on the street, and so I think it's just a—litigation is a traumatic process. It's not fun. It's not for the faint of heart for either victims or defendants, and I think that some

people just feel there is this sense that there are false accusations made and people shouldn't be able to make those because it can be very harmful to the defendants in those cases.

PROFESSOR HAMILTON: Yeah. One of the answers to the fear of false accusations is most of these laws that are being introduced have a requirement that you have to have [a] certified certificate of merit which comes from a mental health professional that this probably did happen to you. So, you can't just walk into court and say, give me \$1 million. You've got to go through that process first. Other questions? Yes.

FEMALE AUDIENCE MEMBER 1: [I]s there a way that a[s] the law reform[s continue to happen it could encourage dioceses] to cover all the [facts?]

MR. DION: If you follow the news, the level of cover up that has been going on for decades, I don't think it could get any worse; I really don't. I don't see how that's possible. It is true that maybe the knee jerk reaction to this is to fight, you know, both the statute of limitations reform by these institutions that are vulnerable to the lawsuits and also to try probably to hide it even better, but it's already so well hidden that I don't see what more they could possibly do.

PROFESSOR HAMILTON: We probably need to break up. I know some of you need to get to class and I need to go teach. I encourage you to come up and talk to our wonderful panel, and I want to thank all of you for making the trip here today and really informing us.

[applause]

I would also like to thank Robin Lee, who did this single-handedly with, her assistants, Ann Marie Soohoo and Drew Levine, but Robin did a tremendous amount to make this happen and thanks to Cardozo Advocates for Kids, which is a wonderful group. I hope you will come back at 1:30 to see the film, *From the Shadows*. This afternoon's panel promises to be fascinating as well, so thanks a lot.

[applause]

PANEL 2**BRINGING OUR KIDS HOME: INTERNATIONAL PARENTAL CHILD ABDUCTION AND RETENTION**

VICE DEAN EDWARD STEIN: Welcome, everyone. My name is Ed Stein. Many of you know me. I'm the Vice Dean. In order to move directly into this really interesting and important topic, I'm going to say almost nothing to introduce the panelists and let them begin talking about what they're here to talk about, so the first pair of speakers who will be dividing up their time are the filmmakers of the movie that many of you just saw, Matt Antell and David Hearn, and so I'm not sure which of you is going to go first, but Matt, you're gonna go?

MR. MATTHEW ANTELL: I'm going to start.

VICE DEAN STEIN: So, I'm going to turn it over to Matt and then David, and they'll each speak for a total of about 20 minutes and then I'll briefly introduce the other speakers and then we'll have time for questions.

MR. ANTELL: Alright. Hi. My name is Matt. I'm the filmmaker along with David behind "From the Shadows," which some of you may have just watched. Our film centers on the International Parental Child Abduction in Japan. Anyway, it focuses on Japan mostly because David and I both have strong ties to the country. There are other countries that have problems—I call them similar problems but there are other countries that have difficulty with abductions of children from North America and other countries as well but, anyway, we chose Japan to make life easy for ourselves. It was just too cost prohibitive to go chasing all over the world particularly on our budget, but we both speak Japanese so that made it much easier for us to choose Japan.

Let me just say that I'm very fond of Japan and I think there are lots of great things about the country and we just happened to show one dark element. But, I think what it comes down to is that the Japanese culture has a different approach to child custody, much different than ours and they prefer a separation of the child and the parent, one child and one parent. That seems to be an easier solving of the issue. You don't have two parents fighting over a child and you never have to deal with, you know, extensive custody issues that are ongoing custody issues when people keep showing up in court. I think that makes life easy. That element of it makes it easy in Japan. You just slice it down the middle and everyone goes their separate ways, but I don't think that takes into consideration how the child feels. In our research we have yet to find a child or a parent who was abducted as a child who is happy that they were abducted and, you know, in fact, we have two people in the movie who wish that they had got contact with the estranged parent.

So, yeah, anyway, and then, I don't know; I've said a lot. Let me just pass it over to Dave.

[laughter]

MR. DAVID HEARN: Yeah. We spoke some before so I'm sure this will be repetitive for a few of you, at least, but yeah. One of the things or one of the thoughts that I had especially early on making this film was why hasn't anybody made a film about this before? It seemed like such an outrageous situation that's been going on for years and years and years that it would seem that someone would have had this idea before us but so when we started filming I was often thinking about that, but we had an experience early on where we went to a different [non-profit organization] called Fathers Website, and it was ironically not only fathers but as mothers, too, who had lost custody of their children.

After meeting the director, I was invited there to film, and when I got there I had my tripod and I was kind of scouting out the room and the director said well would you please go to the back and just shoot forward, don't get any faces, you can shoot my face but don't get anybody's else's face, and I was stunned. I was like, what are you talking about, you know? I course, we want to get a reaction and we want to get emotion and we need to get faces, and we need to get these people showing us. Isn't this what your issue is about, and don't you want exposure, and he was like, for many of the people here it's very—what's the word I'm looking—

MR. ANTELL: [interposing] Shameful.

MR. HEARN: —shameful. Yeah. They didn't want this and then it started to dawn on me that, well, maybe this is the reason why. It's a very difficult story to tell. These people who have lost their children essentially have not found a way to be willing to express that publicly. So having sort of that experience and many similar experiences like that is very educational. Despite this happening to people largely they are compliant especially the Japanese. They are willing to accept it. I mean, they do not like it; they do not want to do it but for the most part they will not protest or often take steps that the non-Japanese will, and I think, that's a big reason why this situation exists to the degree it does because it's so silent, you know? That's part of the reason we came up with the title of the film.

MR. ANTELL: One other thing I wanted to mention was if you did see the film, Paul [Toland] is a parent who can't see his child and he says something that I think epitomizes or just encapsulates what I feel the system is about, and when he was talking about a visitation he had with his daughter in the courthouse, he said that it went really, really well, you know? He heard his daughter say Papa for the first time and she enjoyed the cat, Sachon [phonetic], and then he says, the judge was so impressed with the visitation the judge ordered more but his wife, Etsuko refused and there was nothing he could do, and really that boils it down to what it's about. Ultimately the custodial parent has the power, the ultimate power, and I find that fascinating because how as a lawyer or a judge do you adjudicate a case where the one with all the power is sitting over in the corner there, and nothing you can say or do will change that.

There's no order you can issue that will change that fact so what do you do? It feels like they're all running through motions. It's just, they're all playing a

game and hoping that the custodial parent will like trigger something that she'll or he'll be like, oh well, I'll let him or her see the kid. So, I think that's hard for some people to grasp, particularly in America where I feel like we put so much reference in the court system and the laws while I don't think in Japan they do so much. You know, particularly in civil law, it's this negotiation that keeps people acting the way they do. I don't know—maybe Dave can explain it. It's less the law and more of the social morals and social values that keep a person acting the way they should, but when it gets down to the nitty gritty in a situation where a child is involved, it seems like they're going to take control. So, anyway, that's basically what I wanted to say.

MR. HEARN: Even to take it a step further, I think the most effective approach in gaining of any visitation is through social means, you know, legally. I wouldn't sort of spend my money or time doing what is available through the legal system but would try instead to put social pressure into the situation to get an outcome that is favorable. I had one other point and it just went out of my head.

[laughter]

MR. ANTELL: Anyway, I have some specific cases that might be interesting to you. There's a Portuguese gentleman who he fell in love with a Japanese woman and they had a child and she took the child and he decided he wanted visitation, you know? He got a lawyer and I don't think they were married at the time but she got a lawyer and they got into a room together and they worked out a contract and he paid a quarter of a million dollars to her to visit I believe it was once a week or something like that. So, once he had paid, she reneged. So, the lawyers were there and everything went well. He paid her \$250,000. She then took the kid and moved to an unknown location and he had no recourse. He went back to his lawyer and said what can we do and he said, there's nothing we can do. She took the kid and this isn't binding—this contract. So, that's what you're dealing with, you know? Anyway, that's one story that might help shed some light.

VICE DEAN STEIN: Is there anything about what's going on with the families depicted in the film that sort of changed that you'd like to tell us about or anything, you know, that you wanted to add?

MR. HEARN: Well, we definitely tried to focus on the key aspects of each of the cases, so nothing necessarily leaps to mind. One thing I was kind of curious to know was anybody confused about—well, not everybody probably saw the film, but Paul Toland—his ex-wife committed suicide and I don't know if we effectively told that. When she [died,] the custody was not passed to him at that point; it was passed to her mother, and so the custodial parent of his daughter became the Japanese grandmother, so that's one point. I think it's very interesting and that will happen often where, if one parent happens to die by chance, the custody will not necessarily go to the other one. It could go to the grandparents just as commonly.

MR. ANTELL: Yeah, and I don't think there is anything legally happening. I believe Paul Wong has exhausted all his legal avenues but I just filmed Murray

[Wood] a couple of months ago and while he was there he did receive an email from his son, [Takara] so they seem to have communication, but I think, that is not with the graces[of] his wife, who is unaware as far as I can tell. His ex-wife is unaware of that communication but now [Takara] is old enough, 16 years old, that he's branching out and becoming more independent. I think he is wondering where his father went, so hopefully he'll get a chance to see the film.

MR. HEARN: If we still have time, there is one other point that I wanted to make. As a filmmaker, we have become very much involved in the whole situation, you know? The camera is there following these parents and in scenes where we have unannounced encounters with the children we always tried to have the camera pulled away so we wouldn't necessarily influence the children's behavior, but that's not always easy to do. And furthermore you develop a relationship with the subject, a very trusting relationship, and sometimes the subject would call me especially because I was in Japan a lot, and Matt as well, and ask us for advice. You know, it's very difficult.

Am I giving advice as a filmmaker or am I giving advice as someone who just knows a lot about this subject? Should I go to the police or what's a good option here, or what can I do and, we always tried to make the best decision but we are very aware of the fact that our role was considerable probably in some of these situations and I hope we played it sort of appropriately, you know?

VICE DEAN STEIN: Okay, so let's broaden the discussion a bit, and our next speaker is Jeremy Morley, who is a member of the Bar here in New York whose practice focuses on international family law, and Jeremy is going to talk to us about a variety of issues stemming from the things raised in the film. Jeremy?

MR. EREMY MORLEY: Okay. Good afternoon. Can you hear me okay? Can you hear me in the back? Okay, great. So, I still have the remnants of this. My accent is a bit strange because it's Anglo American and I'm from Manchester, England from many, many years ago but I'm a New York lawyer and I have the most wonderful legal practice that I could have ever dreamed of. I've only done it for about the last 13 years or so which is international family law which is incredibly stimulating and exciting and puzzling, and every day it's a bunch of new puzzles because you get all these intriguing issues that are barraging you from all over the world and somehow it appeals to me.

A number of those issues are Japan related and I can talk about the differences. You need to understand the culture and you need to understand the history before you can understand the law and the concept of the law is utterly different there. It is a totally different creature than what we're accustomed to here, and we can talk about practical issues of how to prevent these problems from happening to some extent and how to recover abducted children, and we can talk about The Hague Convention on the Civil Aspects of Child Abduction which Japan may sign. If they sign it, I don't think it will be meaningful; it may be counterproductive, but I would still like them to sign it. Let me just start, then, by

talking about how as a lawyer you get kids back. It's kind of simplistic to say the way you do it is you make sure they don't get abducted in the first place.

One thing—I have an explosion of work that I'm doing in terms of getting injunctions out of courts in the U.S. to prevent the abduction of kids to Japan to prevent even a visit by a Japanese parent with their child to their home country. Since the [Christopher] Savoie case and all the publicity we got out of that case, it is a lot easier to get an injunction to prevent a Japanese parent taking their own child to Japan. It is inhumane that we get those injunctions. It is horrible that we get those injunctions. It is worse usually if a child, however, is abducted. So, the injunctions may or may not be effective. The typical way to get around them is that the Japanese parent goes to the Japanese Consulate on 48th Street and Park Avenue, here in New York City, and says, "I lost my passport," because usually we get the passports impounded, and, "my dad is dying; we need to take the grandchild over there," and they get a new passport. Since [Christopher] Savoie, the Japanese Embassy says they won't do it anymore; they won't issue replacements if a potentially left behind parent sends a letter saying please don't do it. Whether they will adhere to that remains to be seen.

If the child goes to Japan, how do you get a child back? We usually send a, you know what letter to the abductor threatening her with all kinds of stuff. I say "*her*" because mostly it's a "*her*" and not always. It is a crime. It's a felony under the state law usually. It's certainly a felony under Federal laws.

International Parental Child Kidnapping is a serious felony. We tell her that we're going to get a court order here and we're going to post a mug shot on the International Center for Missing and Exploited Children website, we're going to get Interpol, we're going to get a red notice, we're going to stop her going here, there, and everywhere, and then we for good measure resend the Fed Ex letter to her parents who are co-conspirators, to her brother who may have helped her get the ticket, to her sister who may have helped her pack, and we try and scare the living daylights—as I said, we call it in the office a "scare the you know what letter". It works less in Japan than it works in other countries. It's much more effective to India where they're much more international. People want to be able to travel and it's often counterproductive to send the letter to Japan. It just makes the Japanese girl just decide she's never going to leave Japan for the rest of her life and she'll be safe here, and maybe that's why she went to Japan in the first place.

Sometime if the parents are doing any international business, they will be angry that their ability to travel may be jeopardized and so maybe in a tiny minority of cases they'll tell the daughter to send their grandchildren back to the states. The second way to get a child back is to re-abduct and you can get thrown in jail. That's happened to some of my clients, certainly Christopher Savoie, for 18 days without being charged in a remote town, unable to call out and being tortured because the lights are on 24 hours a day and he's being questioned day and night nonstop, and then the filth—Japan is the most clean country on the planet except

for the prisons. So, if you re-abduct and don't do it right, it can be incredibly harmful.

On the other hand, I've got a client in Jersey City with twins that he re-abducted as there are some better exit routes than others, but he succeeded. She then brought a case in New Jersey to try and get the kids back to Japan and they accepted our testimony that if they go back to Japan, dad will never see the kids again and so there is not an injunction here and the mother in Japan feels that American legal system is criminal and inhumane because she is not able to see her children, so she believes, ever again herself.

The third way to get kids back is bribery and that's what was tried with the quarter of a million dollar deal. You can't bribe unless you get the child physically. If you want to get the child regularly the only way to bribe is I'll pay you "X" dollars per visit and occasionally that works. It doesn't work in most cases, surprisingly enough. The last way is kiss and make up, and believe it or not, I spend time coaching people on how to kiss and make up to the Japanese spouse. I have a lot of experience because I have a Japanese spouse, so it's the best of all to be kind and understanding. In one case I'm thinking of right now, we just got a child back to Los Angeles and I can't tell you the call that I got from the clients telling me joyfully how he followed my advice and my wife's advice. We were on the phone telling him to be nice in a Japanese way to the Japanese mother and don't tell the mother-in-law, you know, what you really think of her, and actually that whole campaign worked.

I got a shock in July when I went to the Ministry of Foreign Affairs of Japan to talk about whether Japan should sign the Hague Convention and the room was filled with about a couple hundred lawyers from all over Japan and the prevailing mood, there was certainly no consensus in favor of Japan's signing the Convention, and without a consensus it's very difficult for them to agree to recommend anything because the Japanese law works on the basis of consensus far more than state power. Just to kind of tell you the context of the way these things work, the meeting was almost our efforts to persuade the Japanese lawyers that the Hague Convention is a good thing and we were almost sabotaged by a group of Americans who represent mothers in the United States who are victims of domestic violence and there's some evidence that's being presented at the Hague Convention. This is a dangerous instrument that hurts abducting women who are fleeing from domestic violence and there is a report that's just been issued.

A study was issued by a professor at the University of Minnesota, Jeffrey Edleson, a social scientist who followed 22 people who abducted children to the United States and then were sent back to the countries from which the abduction had taken place and the conclusion is that sending children back under the Hague Convention is very bad for the abducting person who is usually a mother. I think the study is skewed. I'm not going to talk strongly about it because I might need to represent an abducting mother, but some have said that the study is outrageously

self selecting. To participate in this study you had to be a mother who had abducted a child to this country who said that, "I'm a victim of domestic violence and I've been hurt by the Hague Convention," basically. When the Japanese heard of the existence of this, it was music to the ears of those who don't like the Hague Convention. They believe that the Japanese people who are taking children to Japan are basically fleeing American husbands who are abusive. That is the belief among the people who know anything about this at all in Japan.

The last thing before I shut up and let the panel continue is that I do think that you need to understand this from the perspective, and let me take an extreme example, of a young Japanese mother who is here, married to a Westerner in New York with a young child, and then the relationship breaks down and their English skills are not perfect, perhaps, and their family is over in Japan. When the relationship breaks down they just believe that it is a natural right to be able to go home, and home is always Japan. When they hear that there may be a way to stop that, they feel violated, yet when the American father, the potentially left behind father, says you can't go because he is worried that in Japan he will get no visitation that will be effective. Then the Japanese mother here does not trust the American courts because if the Japanese courts that she knows are so awful, why on earth would the American courts be helpful?

Then somebody like me is hired by the father to get a court injunction to prevent her from leaving and then American is prison to her, and she is away from everything that she knows and she is exposed and she doesn't know that there is an effective legal system here that will at least get her child support because in Japan there will be no real hope of getting significant child support and there will be no alimony in Japan, so from her perspective—now add on to that the fact that sometimes there is domestic violence and that may be greatly exaggerated. You're in a situation when the clash of the two cultures and legal systems just creates horrific results in a total no-win situation. So, in some ways, what we're doing in getting these injunction orders is counterproductive and I'm certainly not the solution, but I believe that it stems from the fact that there is no effective legal system in family law in Japan. To understand that, I'm not going to go on and explain that, but there is a great book called "Authority Without Power" and that explains the utter difference of the legal system in Japan and its entire culture and history. Without a consensus that the law is right, you're not going to have an effective law, and I'll shut up for now.

VICE DEAN STEIN: So, Corrin Ferber is here from the U.S. Department of State, Bureau of Counsel Affairs. She is also a Cardozo graduate.

MS. CORRIN FERBER: Well, I just want to say that the school looks much nicer. You guys have been hard at work since I was here.

[laughter]

The questions that I got from Anne Marie Soohoo had to do mostly with what parents should do and what the U.S. government can provide. I think probably it

won't come as a surprise to you we can't advise parents about what they should do. Generally we remain as neutral as possible. If it's a Hague Convention signatory country, you know, the obligations under the Hague Convention serves as a guard to help the child return to the country of habitual residence, so that's a little different than if we're dealing with non-Hague countries, but our role really is to provide as much information as possible and then have the parents make the choices that they want to make, and we answer as truthfully and as transparently as we can but ultimately it's up to the parent.

I think it's frustrating for a lot of parents, particularly in the case of Japan where the one time that we do advise them is, have you thought about retaining counsel both here and in Japan, because they're in a better position to advise you. The State Department can advise you. We're more of an information provider. With that said, we have a great website, and if you want more information about Japan, there is a lot up there. It's www.travel.state.gov. And you can see who is a Hague country, who is not, and what you do and steps that you take. We have a tremendous amount of information for parents who are left behind in the United States and those who are left behind abroad whose children have been brought into the United States.

I agree with what Jeremy Morley said earlier that, I think with Japan we have fewer tools in our toolbox than we do with other countries. In a non-Hague country other than Japan, for instance, if we talked about the Middle East, or other countries that have not joined The Hague Convention, because of the economies in those countries, there is more of an interest in transiting the United States or other countries that we may have relationships with and so they don't want a warrant out for them or red notice from Interpol and they may be more interested in resolving the case voluntarily because of that. We resolved a case that I remember very clearly. It was a pilot from Saudi Arabia who had a transit, Newark Airport, regularly on his route. Well, it wasn't going to work if there was an Interpol red notice and warrants outstanding for him, and that was a big incentive for him to resolve the case, and also the Middle East is a different dynamic. I shouldn't generalize, but I'm going to. It's usually dads who sort of trap the mother and the kids in-country or trap them here in the United States and then they go around the world and do their business. So, it's a different demographic.

The difference with Japan is if the parent gets a warrant either for international parental child abduction or for unlawful flight to avoid prosecution, the Japanese economy is heartier and people don't necessarily need to transit the United States for work or for any other reason, and as Jeremy noted, they may just decide to stay in Japan until the kid is 20 and that would be that. So, we don't have the same kinds of leverage that we do in other countries. Similarly, there is provision in the INA, the Immigration and Naturalization Act, it says that if you have somebody aiding an abductor we can revoke their visa. It's a long and complicated process, but it's possible and, again, with Japan because we don't

necessarily have an interest in getting a visa to the United States or Japan as a visa waiver, so they don't even have to ask for a visa unless they want to stay more than 90 days. We don't have the same leverage that we do in other countries.

With that said, I agree that an ounce of prevention is worth a pound of cure, and to that end, the State Department does have a few—we have another prevention area in our office and I think Courtney Houk is going to talk about that. There is information about prevention on our website and I think we're the most effective when it has to do with passport issuance. In 2001, there was a statute passed that requires both parents to consent to the issuance of a passport for a child under 16, and then we have a regulation that directs the Department of State about how to implement that. There are some exceptions but generally both parents have to consent to the issuance. If a parent wants to alert us that they do not want a passport issued, we have a child passport issuance alert program and they send us their information and it's in our system until either the child turns 18 or the requesting parent asks for it to be deleted from our system. But, that helps us keep track of where this child is and not issue a passport if a custodial parent objects.

If a parent gets as far as the airport, and if the left behind parent alerts us in time, we have some ability to work with our counterparts at the airport security and other agencies that we might be able to prevent the departure because being able to run on the plane and assist the parent and the child off is much easier than trying to get a child back. However, that would only be applicable if the parent is a non-United States citizen. So, if you have a parent who is a dual citizen of the United States, in Japan, or any other country, unless there is a very, very strong court order in place, sometimes the agencies lose their ability to prevent that departure.

Basically the other two questions I got had to do with what are we doing? What is the State Department doing about this problem? I don't know if it's apparent to the general public, but to the people that follow this issue there has definitely been a shift in the Department of State. Secretary Clinton takes the issue of child abduction extremely seriously and has given a lot of attention to this issue. She recently appointed a special advisor on the issue of international abduction and adoption, and that is Ambassador Susan Jacobs, who is in our office but mostly she travels to other countries who have not joined the Hague Convention and has bilateral discussions with them about what would make it easier for them to join, how can we help them, could we offer them technical assistance including judicial training or attorney training. If the answer to that is yes, then we pack our bags and we go but some countries are a little bit more standoffish and they'd want to have more of an exchange of notes and it goes a little bit slower than we'd like but we're always available to other countries that are interested in joining and as soon as they tell us, we're ready to go.

We have talked with the Ministry of Foreign Affairs in Japan, in the Ministry of Justice, and it can be a little bit confusing at times when they can't tell us if international parental child abduction is a crime and it seems like a simple question

but we didn't get a simple answer, and until they can answer that question, that limits the remedies that we have, but we still ask because maybe we'll get an answer one day. The other points I wanted to make about non-Hague countries, there is another process that The Hague Conference, the Hague Permanent Bureau, runs called the Malta Process and that's for countries, generally Middle Eastern countries, that are not going to join the Hague Convention, no matter how much jumping up and down we do, but we want to have them a dialogue with them.

The Hague countries want to have a dialogue with them about how we can resolve the problem of child abduction between our countries and that Malta Process has developed into looking at abduction, custody and visitation as more a problem that can be solved through mediation. In fact, they are meeting at The Hague this week, right now, to further develop their plans to develop mediation programs in both non-Hague countries and Hague countries. So, at least that's a promising step. I don't think Japan is likely to join that group because as was said earlier, the Hague Convention and other tools like that, is sort of feeding domestic violence victims to the wolves but I would agree that the study that was referenced by Professor Edleson was very skewed and not really a neutral sort of explanation of the dynamic of domestic violence and the Hague Convention.

As you are probably already aware, there are affirmative defenses in the Convention where taking parents can raise the issue of domestic violence so it's not necessarily that a court has to return a domestic violence victim to the habitual residence. I think I'll stop there and leave time for questions. Here's Courtney.

MS. COURTNEY HOUK: Well, you heard the overview of what's going on in the culture, the laws in Japan, and then what the State Department does writ large. My name is Courtney Houk and I work at the Department of State in the Office of Children's Issues with Corrin and I am a case officer. My job is to work exclusively on the portfolio of outgoing abductions to Japan, and as Corrin mentioned the State Department is taking this very, very seriously, and just to give you an idea of how our office is set up, for the outgoing abductions to every country we have case officers who normally work on several countries. Their portfolio can have three or four countries. My portfolio is only Japan and I have a colleague who also works only on Japan. Japan is the only G7 nation that is not a signatory to the Hague Convention, so it's a key policy issue for the State Department. Our job overseas at the Embassies and the Consulates is basically among other things, but most importantly, to look out for the welfare of U.S. citizens and these abducted children are U.S. citizens and citizens of another country as well, perhaps, but they are American citizens and it's our responsibility to try and take care of them.

Our office is divided into several sections. One is prevention and that's when the parent calls us and says I am afraid. My husband or my wife or whatever is going to take my children. You heard some of the things that can be done to prevent that. For example, the passport alert program or an injunction. There are

many different ways. I don't deal with that. That's a totally separate office. I also don't deal with cases where the children have turned 18. That's the age of majority in the United States. At that point, the Embassy or the Consulate overseas will send a letter to the child saying congratulations; as an American citizen you have certain rights and responsibilities as an adult; please come in, register to vote, etc., etc. What happens sometimes is the child will come in or will contact the Embassy and ask about the parent who was left behind in the states, and at that point contact can be made, so there is room for a happy ending there.

I deal with the other group. I deal with the parents who have children who are under 18 and who have been abducted. I really recommend you take a look at www.travel.state.gov. As Corrin mentioned, we have a section on child abduction and we have specific information on Japan, and we have a second website that you can link to from that that gives you more of a flavor of what it is to deal with this issue and the Japanese in the sense that we have press information. We also have information on the laws and as you've heard it's very, very difficult. The Japanese do not consider child abduction by a parent a crime and, as you heard in the movie and as you heard from the panel members, enforcement of court decisions are hit or miss. It's really nothing like our system where if there's a court decision you assume it will go forward.

In addition to suggesting www.travel.state.gov to parents, we also can provide as Corrin mentioned names of attorneys and names of translators. One thing that we do sometimes is provide kind of a balance. We don't give advice but a lot of times the parents will contact us and talk about what they've heard from other parents—the parents have suggestions to do this, to do that, and the one thing that is often very difficult for a parent to understand at a very emotional and a very difficult time is people are very different and it's very important for the parent who is left behind to try and take into account what the taking parent feels. It's a very emotional issue. It's also a very personality based issue and sometimes that gets lost in all the discussions about the culture and the laws. It has a lot to do with the personality of the parent who abducted the children, somebody who is willing to go to that extent. So, we spend time with the parents and we try and work with them on these different issues.

We also offer what we call welfare visits. That's where the Embassy or Consulate at the request of the parent left behind in the United States will contact the taking parent and ask for a visit. Now I want to be clear—this is where the Embassy staff visits the parent and the child; it is not necessarily where the parent left behind visits. That's something else that has to be worked out differently. Sometimes parents agree and sometimes they don't. They have the right to refuse. What we often do when they're repeated refusals to agree to such a visit because again it's an American citizen child. We have a right to know the welfare of that American citizen abroad. We will go to the Ministry of Foreign Affairs in Japan and request their assistance in trying to get this visit and probably unsurprisingly

we don't have tremendous success. As you heard in the movie as some of you may know from other sources, there is no record of a child being returned from Japan with the help of the government in Japan. Any kind of return is voluntary. You just extend that out and there is really no pressure on a parent to agree with a visit.

One of the hardest things about the job is dealing with a situation where it looks like nothing is going to change. The laws aren't going to change, the culture won't change, but I'm starting to see a bit of a change in Japan. I think it's very telling that there are a lot of press, media articles, interviews, that type of thing, talking about this issue and the reason that's so important is as you saw from the movie parents who we represent, U.S. citizen parents who have been left behind are treated no differently than Japanese parents who have been left behind. They're in the same country and they don't see their children, and the more press, the more that this is brought to the floor, I think the better chance there is to have a real discussion in Japanese society on whether this works or whether this doesn't, because ultimately it's about the child and a lot of studies internationally have shown that what's best for the child is to have both parents in his or her life.

We recently had some visitors from the government of Japan. They were in the United States and we recently had Ambassador Jacobs, our special advisor, in Japan, and the questions have become a lot more in-depth. They've become a lot more detailed from the Japanese regarding the Hague Convention, regarding access to children. Do I think anything is going to change next week? No, but I am hopeful that things are starting to change because it seems to me that a dialogue is going to begin and that's where this has to start. The Japanese have to begin talking about this and how it affects not just us but how it affects their own citizens, citizens of France, Australia—any country where there is a parent who's left behind who has no access or no contact with the child.

VICE DEAN STEIN: So, let's open it up for questions and discussion both from the floor and among the panelists. Questions?

FEMALE AUDIENCE MEMBER 1: This question is for either Corrin or Courtney, maybe you could elaborate a little bit more about exactly what the Hague Convention on Child Abduction is? What role does the State Department play in administering and enforcing the Hague Convention? In the scheme of the Hague Convention, what should a left-behind American parent do?

MS. HOUK: Do you want to take that?

MS. FERBER: The Office of Children's Issues of the Department of State is the central authority that administers the Hague Abduction Convention for the United States. AS a central authority, if a parent wants to file a petition, they can go to our website and download the petition but the first piece of that is the child has to be taken from a Hague country to another Hague country. They have to be treaty partners. There are some countries that have joined the Hague Convention that are not our treaty partners, so if you want to know if it's a treaty partner of the United States, you go to www.travel.state.gov and you can see that we have 68

treaty partners even though more than 68 countries have signed or have joined the Convention. The child has to be under 16. So, the first two things that we're looking at is, is the child under 16 and was the child taken from the United States or to the United States from one of our treaty partner countries?

The application asks a lot of questions and asks for a lot of supporting documents. Basically the supporting documents are about your case, which would be under Article 3 of the Convention. If you are the left behind parent you have to show that you had custodial rights at the time the child was taken and that you were actually exercising those custodial rights or but for the abduction you would have been exercising the custodial rights, and the custodial rights could arise by operation of law or through a judicial or administrative proceeding. So, if you were divorced and you had joint custody and access rights, you attach the order. If it was by operation of law, if there is a statute in that jurisdiction, you attach it. If there isn't a statute in some jurisdictions, it is a little bit more complicated, but our office can help you with that a little bit. Then you append your application with all of that information and if it's an outgoing case our central authority forwards that application to the foreign central authority.

So, let's say France and the French Central Authority then forwards the case to the appropriate court if they have located the child. The first thing that French Central Authority has to do is locate the child. Once that happens, then the left behind parent would have a better understanding about where the case is going to be heard. Similarly, if our office receives a petition from a foreign central authority, we have an obligation to locate the child first and we do that through lots of different ways through, you know, regular search engines that you all have access to like LexisNexis or Google, or that kind of thing, or every state has a missing children's clearinghouse that our case officers are in contact with and the U.S. Postal Service has law enforcement people and we will hopefully work our magic and find the child in the United States and that's I think the most difficult part. But once that happens, then the left behind parent with the advice of counsel will determine whether to file the case in state or federal court. Our implementing legislature allows the cases to be heard in either state or federal court.

After that, the State Department really doesn't have a role. The court is going to be the fact finder about whether or not the child has to be returned to the habitual residence or not because there are, of course, our defenses and the affirmative defenses are in Article 12 and 13—correct me if I get any of this wrong. One is that if the child has been gone from the habitual residence for more than one year and is settled, the court finds that the child is settled in the new country or the new residence, the court could decline to return the child. Article 13b, which is a lot of what Professor Edleson's article was about, is if the taking parent raises the issue that there is a grave risk of harm of being returned to the habitual residence or returning to the habitual residence would create an intolerable situation, then the court could decline to return the child to the habitual residence.

The court also has to take into consideration the views of the child, if the child is of sufficient maturity, and I think the United States diverges most greatly on that issue with other countries. Most European countries everybody talks to the child. Germany has a law; you have to talk to kids as young as three and in the United States we take a different view toward interviewing children. I think courts are very sensitive that they don't want to traumatize a child, and we've talked in these multilateral meetings about how U.S. judges are much more likely to hear the child through a guardian ad litem through a mental health professional like a social worker or a psychologist, even a custody evaluator, but it's less likely that the court will actually interview the child. Obviously, the older the child the more likely the court would hear the child in chambers requesting that both parents waive the right to be present, but that's in the United States and this is the least favorable option whereas in other countries that's their go to. They don't think anything of it. Did I forget anything?

MR. MORLEY: The consent and acquiescence.

MS. FERBER: Oh, right. The big one.

MR. MORLEY: Uh huh.

MS. FERBER: Some taking parents will say, he knew I was going to go, I told him I was going to go, he said it was okay, and that's consent and acquiescence. So, once the abduction case is made, the burden shifts to the taking parent to prove one of those affirmative defenses, and I think that was the quickest way to summarize the Convention.

[laughter]

MR. MORLEY: I'm just going to throw in one reference, too. There is one more defense that you didn't mention because it's never used and that's the defense of the whole thing about human rights.

MS. FERBER: [interposing] Article 20. I know it.

MR. MORLEY: —and just for those of you who are nerds about really going into interesting developments in the law, there was a Swiss case where a Jewish Swiss national went on - - to Israel—

MS. FERBER: [interposing] Uh huh.

MR. MORLEY: —and met a guy who was not religious who after the marriage converted to “ultra” Lubavitch Chabad and is the guy that would go around Tel Aviv on roller skates telling or trying to get people to put on Tefillin and they had a baby and she didn't like what the Europeans called or later referred to as being not extreme—what's more than extreme—not quite insane. She didn't want her child to be exposed or to be raised that way, and cutting a very long story short, she hired a smuggler for \$30,000 or Euros, got out through Sinai and got the child in violation of an order of protection, that the Israeli court had issued initially at her own request, because she didn't want her child to be taken to some strange place outside of Israel. She kidnapped the child, he brought a Hague case in Switzerland, lost, appealed, and lost.

Basically the reason that he lost was that of grave risk and they accepted the fact that she, the mother, would be arrested if she went to Israel while she had violated Israel law and they kind of bootstrapped that and said this is a valid defense. He appealed again the third time, the second appeal, third case, to the federal courts in Switzerland which is a top court and won, and they said it's a clear wrongful taking and should be returned to Israel. She had now wasted two years, appealed to the European Court on Human Rights saying that the entire thing is a violation of the European Convention on Human Rights, specifically Article 8, which says that you have to have respect for the family.

After another year, she loses, the father wins, the child is supposed to be returned, and she appeals now to the Grand Chamber of the European Court of Human Rights, 17 judges, who after another year, of which now four years have gone by, ruled 16 votes to 1 not to return a child after four years would be a violation of Article 8 of the European Convention on Human Rights. The child, therefore, was not returned and the European Court has now ruled that human rights trump the Hague Convention and there is no binding quality to that in the United States. I am sure that every Hague case now in the world is going to claim human rights as a defense and they'll drag the cases out longer, but it's a development that has not yet started to reverberate through the courts but it will.

MS. FERBER: Which we're nervous about because we don't want to see every Hague case turn into a case where essentially the taking parent is rewarded for litigating as long as possible and then the result is that it is this violation of—

MR. MORLEY: [interposing] And the language into this session says, and the idea that the Hague Convention is, that just return a child quickly so that the court in the right place can decide what's best. The language of the European Court is you can't return a child without considering the best interest of the child. What that means is they've opened the door to every Hague case becoming a custody case and that's exactly contrary to the essence of the Hague Convention.

MS. FERBER: There aren't any decisions that we're aware of that were decided on Article 20 in the United States, so it's clear that our judges have a different view than at least Western European courts.

MR. MORLEY: We've not raised our defense here, so we've not used the European cases or authority but it might be interesting.

MS. FERBER: Right. Not yet, but there aren't any cases now.

MR. MORLEY: Right.

VICE DEAN STEIN: Questions? Yes?

MALE AUDIENCE MEMBER 1: You mentioned that in compliance with the Hague Convention, the United States will, for the most part, return abducted children to their countries of origin, if the children are abducted from signatory nations. Does this mean the Hague Convention requires implementing legislation as a condition of signing the treaty?

MS. FERBER: I'll do the first part, which is you only have to have implementing legislation if your country requires it. We are partners with some countries where their constitutions don't require implementing legislation and as long as they have procedures in place that tell their executive and judicial branches what to do, we could still have a functioning treaty relationship with those countries. Why haven't we accepted all the other countries that have signed? If a country accedes to the Convention, the Department of State will determine whether or not to accept their accession, and to do that we look at things like does their constitution require implementing legislation and if so have they enacted it, because some of them do say yes, we've acceded, we've deposited our instrument at the Hague, we're ready to go, but they're really not ready to go and the United States will generally partner with countries that are ready to go. So, we conduct our analysis and determine whether or not we're going to accept them. And even if we've decided not to, we could always revisit that and decide to accept their accession at a later time.

MALE AUDIENCE MEMBER 1: Even if Japan signs the Hague Convention, what effect will that really have considering their current legal structure and cultural understanding of this issue?

MS. FERBER: We don't have to accept their accession because there is a difference between ratifiers and acceders, and if you are ratifying the Convention it's because you are or you were one of 14 countries that drafted or—what's the word; I'm drawing a blank—

MR. MORLEY: [interposing] Did they sign? No, they didn't sign.

MS. FERBER: No, they didn't sign.

MR. MORLEY: They were members—

MS. FERBER: They were members of the Permanent Bureau and when they—not ratified but when they settled the language of the Convention—

MR. MORLEY: [interposing] Adopted.

MS. FERBER: —adopted. There you go. When they adopted the Convention all of those countries would immediately become partners with one another once they ratified, so of those 14 countries, Japan is the only one that has not ratified but once they do we will automatically be partners and the department doesn't have the opportunity to go through that analysis but you're right; if they're domestic law isn't amended significantly it will be hard for them, I think, to comply although maybe their legal scholars know something that I don't and maybe they can comply, but if you're not one of those 14 countries then there's a separate accession process that's provided for in the Convention itself.

MS. HOUK: The Japanese—

MR. MORLEY: [interposing] They did know. Sorry.

MS. HOUK: The Japanese do know that they've got legal issues. The Vice Ministerial Committee that's been formed to look at The Hague is not just to look at the process of how to join the Convention, how to accede; it's also how to

implement in Japan. They know that there are issues. They know that they need to look at their domestic law.

MR. MORLEY: The civil code provides only for sole custody and doesn't provide for any sharing of custody, so they actually feel. My sense is that the discussion about whether they should sign, The Hague has triggered a debate that's quite important on whether they need to change their entire family or child custody or child carrying law and that is what they're discussing right now and that's why the vibes that I got were the Ministry of Foreign Affairs once to sign because they are getting a lot of pressure from the west had the Ministry of Justice may be taking a different view because there's a lot of work to be done to change the underlying law.

MS. FERBER: I forgot one more point about The Hague Convention. Most of our parents are asking for the child to be returned to the habitual residence is tantamount to home state under our uniform law, but you can ask for access so if you can't make out a - - case or something else in your case, or maybe you don't even want the child to be returned; you just want access, you can file a petition requesting access, but as we saw in the film that would really be problematic for Japan to enforce because they don't enforce their own access orders. I was recently in a meeting and they asked us, you know, how do your courts enforce these orders, and we went down the process of what family courts and state courts have the authority to do or the discretion to do and ultimately somebody can be held in contempt and I explained what that means that a parent can be incarcerated until the child is produced and their eyes sort of bugs out of the head. They are like, oh, that's just not an option here which is, you know, why—they don't have the same course of powers that our judges have and that's really problematic for not only the custodial part but for forcing the access part of the Convention.

MALE AUDIENCE MEMBER 2: Are there legal consequences for signatory nations who fail to comply with the requirements and terms of Hague? Do other nations enforce the Treaty?

MS. FERBER: So if they're noncompliant?

MALE AUDIENCE MEMBER 2: Right.

MS. FERBER: Well, we shake our finger at them. We have a statutory obligation to submit a report to Congress about who among The Hague Convention countries we feel is not compliant, at least with cases with the United States, and countries do not want to be noncompliant because it is published and it's on their website, and it causes sort of a bilateral kaffuffle between the United States and that other country. It is a mechanism or tool that we have that other countries don't like. They don't want to be in that report to Congress. That's one of them, but the Permanent Bureau, it's a voluntary organization. When we sign, everybody signs with the intent to obligate their country to comply. I don't think there is not a great mechanism, you know? There's no shunning or kicking out of the club, you know?

[laughter]

We have government to government communications and we might send diplomatic notes to the other country about what's going on with regard to Hague Convention compliance. Certainly our leadership will raise it in diplomatic sessions with their counterparts but there isn't like, you know, an overall remedy this is what you do to fix it. That's why we're careful who we accept.

DEAN VICE STEIN: I have one question. If Japan were to sign Hague Convention and basically decide to become noncompliant or not, or have whatever rate of return, assuming it could be 0, wouldn't it potentially be the best of both worlds for them to sign the Convention and then go about deciding whatever rate they decide to return at even if it is zero? I mean, then they can say, hey, we're signatory; we're just like all the other G7 countries in the world but we just happen to be noncompliant.

MS. FERBER: That's if you're looking at it from the Ministry of Foreign Affairs, right? We were getting pressure from all of these countries; let's just hop on the bus and then they'll stop bothering us but the Japanese public is really who you have to deal with and they view it more as the west is pushing us. You know, it's sort of like your succumbing to the man; you know, don't give in to foreign pressure, especially things that we think are not in the best interest of our Japanese citizen women and children.

VICE DEAN STEIN: Uh huh.

MS. FERBER: So, if you want to be reelected to the National Diet or, you want to keep your fancy position you're in, the Ministry of Justice or wherever, you are careful about joining or not joining because I think it puts their political leadership in a very difficult position.

MR. MORLEY: I agree that it would make sense in a way for them to sign and then not comply. It will buy them a few more years of no pestering—

MR. MORLEY: —and then they may—I mean we judge other countries on their compliance of the Convention. A lot of other countries are upset that America judges them. I don't think our house is perfectly in order either and I'm not going to open that door right now, but I think that we are not fully compliant in a way ourselves. They would probably accuse us of being not compliant in certain respects as well and some of that might actually be justified. So, if I were a politician in Ministry of Foreign Affairs, maybe I would say let's just sign the damn thing and let's come to this in a few years. That would actually really hurt. When we're bringing cases now to try to enjoin foreign travel, it would really hurt. It would really hinder our efforts to get those kind of injunctions if they signed because judges may think that signing the Convention is necessarily very meaningful.

VICE DEAN STEIN: I had a question. There was talk earlier about mediation as an alternative and I wondered what would be, first of all, should we be optimistic about that as a method for resolving some of these problems and maybe

just to hear a little bit more about both whether this is going to be something that seems likely to work and what form that international mediation might take.

MS. HOUK: I think that's exactly what they're trying to figure out.

VICE DEAN STEIN: Okay.

MS. HOUK: Right now there are mediation programs among western European countries already and those are probably much more successful than once you have countries outside of the Western European countries. So, Germany and France have a successful program but they're proximity to each other and, you know, the transiting that people do between those countries is so fluid that it allows for much more successful I think mediation program than something between the United States and the Middle Eastern countries that are a part of this Malta process. With that said, we're always hopeful and we'll always try. I think they're trying to develop now sort of uniform criteria around what kinds of cases are suitable for mediation because not every case would be, and then what kind of qualifications should mediators have. I think we generally have the most problems with that because of the diversity and most mediation programs in the United States if they are even accredited it's through state law and all the qualifications are quite different whereas in smaller countries they may have just one national program or approach issue and it's much easier for them to create a program than it is for us.

That said, we recently posted a request for proposals for organizations who are willing to accept international mediation cases, and we've gotten some responses and we're reviewing those applications now, and once some organizations are selected will certainly publicize in our website and they will also be in contact with their foreign counterparts. There is a very successful program in the UK called Reunite, but one of the reasons why they're so successful is they can just focus on the cases because they're funded by the government as opposed to also having to search around for funds. The State Department can't provide funds, so the funding would be through clients, but obviously the selling point there is it's a lot cheaper than litigating.

MR. MORLEY: The Japan mediation is very well established. Every divorce case must be mediated, so they are very familiar with that concept. When a left behind parent begins a case over there and is in mediation as part of a divorce case, typically it doesn't work but that's because the mediators are Japanese and the context is a law that has no teeth. So, I think mediation may work if you've got a context and then, hey, if you don't agree, then such and such will happen. So, the context would have to be changed.

MS. HOUK: Right. You'd have the same enforcement problem.

MR. MORLEY: Yeah. Mediation works when you say, hey, if you don't agree to this, then we'll bring a regular case—

MS. HOUK: [interposing] Right.

MR. MORLEY: —so there's no regular case unless they change the law and change the system.

VICE DEAN STEIN: Okay. Thank you all very much for attending.
[applause]

