AMENDMENTS TO THE FEDERAL KIDNAPING STATUTE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 4191 and H.R. 8722

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AMENDMENTS TO THE FEDERAL KIDNAPING STATUTE

WEDNESDAY, FEBRUARY 27, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, the Hon. John Conyers, Jr. [chairman of the subcommittee], presiding.

Present: Representatives Conyers, Rangel, Cohen, Fish, Froehlich, and Maraziti.

Also present: Maurice A. Barboza, counsel, Constantine J. Gekas, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

We are pleased to open this hearing of the Subcommittee on Crime on proposed legislation to amend the Federal kidnaping statute, section 1201 of title 18 of the United States Code. Under consideration are two bills, H.R. 4191 and H.R. 8722.

Briefly, H.R. 4191 would remove the parental exception to kidnaping and H.R. 8722 would create a rebuttal presumption that a person who voluntarily agrees to travel with another to a particular destination and fails to arrive at that destination after a reasonable period of time is inveigled or decoyed. The purpose of this legislation is to mandate the investigative assistance of the FBI in parental kidnapings and certain missing persons cases.

Regarding parental kidnaping, the subcommittee intends to determine whether Congress 40-year-old exemption of this form of kidnaping from the criminal code should remain standing.

We will also examine the extent to which apparent missing persons cases turn out to be actual kidnapings and whether these cases warrant the investigative assistance of the Federal Bureau of Investigation. In a letter to Attorney General William B. Saxbe, dated February 25, I confirmed several requests for information made to a representative of the FBI by counsel relevant to this issue. That letter will be made a part of this record.

[The letter referred to follows:]

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 25, 1974.

HON. WILLIAM B. SAXBE,
Attorney General, Justice Department,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: This is to inform you that the hearing to be held by the Subcommittee on Crime on H.R. 4191 and H.R. 8722, relating to kidnapping, has been rescheduled and to confirm certain requests made by counsel

to the Justice Department relevant to the Subcommittee's consideration of this legislation. The hearing will be held on Wednesday, February 27, at 10 a.m., in 2141 Rayburn House Office Building.

As you may know, majority counsel, Maurice A. Barboza, and minority counsel, Constantine J. Gekas, met with Robert [Richard] Gallagher of the General Investigation Division of the FBI on February 15 to discuss the procedures followed by the FBI in missing persons cases. Counsel has informed me of several requests for information made to Mr. Gallagher during this meeting including a request that he accompany the Department's designated witness, Deputy Assistant U.S. Attorney General John C. Keeney, to the hearing in order to provide the subcommittee with the benefit of his experience in the area of kidnapping.

I concur in the initiatives taken by counsel and request that you designate either Mr. Gallagher or an FBI representative equally qualified to discuss, in detail, the FBI's role in missing persons cases. In order to arrive at an informed opinion with respect to the legislation under consideration, the subcommittee should have, in addition to the official legal opinion of the Department, the benefit of an understanding of the complex problems involved in missing persons cases. Based on the detailed request for information made by counsel, it is my view that only an experienced representative of the FBI would be capable of responding fully to the kinds of questions which the subcommittee members will pose relating to this information.

The following is a list of information requested by counsel, and it would be appreciated if it could be provided to the subcommittee at least a day in advance of the hearing: a detailed explanation of the assistance which the FBI provides to state and local law enforcement officials in missing persons cases; a detailed explanation of the procedures followed by the FBI in the case of Karen Levy of New Jersey; and statistics compiled from a representative sampling of large and medium size cities relating to:

The number of kidnapping cases referred to the FBI,

The number of apparent kidnapping cases the FBI referred back to state and local law enforcement officials after a finding that they failed to meet requirements under section 1201(a) and section 1201(a)(1) of title 18 of the U.S. Code,

The number of kidnapping cases investigated by the FBI,

The number of missing persons cases the FBI refuses to investigate which turn out to be kidnappings and of these cases, the duration of time between the filing of a missing persons report and the time that the individual is recovered, and

The number of missing persons cases reported to state and local law enforcement officials and a breakdown of these statistics indicating the number of cases revealing, after investigation by these officials, that the individual had run away, and the average duration of time between the filing of a missing persons report and the return of the individual.

I trust that you will be able to comply with the above requests for information and make the necessary arrangements to designate an appropriate representative of the FBI to accompany Mr. Keeney to the subcommittee's hearing.

The Department's briefing of Mr. Barboza and Mr. Gekas is appreciated. I am confident that because of it, the subcommittee will have a much more thoughtful hearing. I thank you for your cooperation in this matter.

Sincerely yours,

JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime.

[The following communication is in response to the letter of February 25, 1974, to Attorney General William B. Saxbe:]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., March 13, 1974.

ASSISTANCE FBI PROVIDES TO STATE AND LOCAL LAW ENFORCEMENT OFFICIALS IN MISSING PERSONS CASES

In a missing person case, as a matter of cooperation, the FBI will at the request of the state or local law enforcement agency make available the full facilities of the FBI Identification Division and the FBI Laboratory and the FBI will cover out-of-state leads.

The FBI Identification Division will check its files for any current information. The FBI Identification Division will conduct any comparison that the local police agency so desires. A missing persons notice will be filed by the FBI Identification Division at the request of the local police agency. (Missing persons notices will also be filed for relatives, other governmental agencies, and agencies such as the Salvation Army and Red Cross acting on behalf of the relative of the missing person.) As of January 31, 1974, there were 5,109 missing persons notices on file in the FBI Identification Division. In the calendar year 1973, 85 missing persons were located through assistance furnished by the FBI.

The FBI Laboratory will conduct any kind of technical examination requested by the local authorities. This may include, among many examinations, the examination of clothing, hair, and soils. It could include a chemical examination, metallurgic examination, or any other examination that the local police authorities so desire.

In connection with the coverage of out-of-state leads, the FBI will endeavor to identify, locate, and interview any person the local police feels may have information regarding the disappearance and the FBI will cover any logical lead requested by the police.

U.S. Department of Justice,
Federal Bureau of Investigation,
Washington, D.C., March 13, 1974.

For the Calendar Year 1973

1. Number of missing persons cases referred to the FBI, no investigation conducted, no missing persons notice requested—1,342.
2. Number of missing persons cases where missing persons notice requested—622.
3. Total number of missing persons cases—1,964.
4. Number of missing persons cases where FBI rendered considerable assistance to local authorities—62.
5. Number of situations where one parent took the child, no Federal violation apparent, no investigation conducted—470.
6. Number of situations where investigation necessary to determine if one parent took the child—197.
7. Total number of parent situations—667.
8. Number of kidnaping cases referred to and investigated by the FBI—1,615.
9. Number of kidnaping cases where FBI conducted investigation and subject prosecuted in local court due to lack of Federal jurisdiction under Section 1201, Title 18, U.S. Code—146.
10. Number of missing persons cases not investigated by the FBI which turned out to be violations of Section 1201, Title 18, U.S. Code—0.

INVESTIGATION BY LOCAL POLICE

The FBI Albany Division furnished the Syracuse Police Department all of the facts as known plus a photograph of Miss Levy. Syracuse Police and New York State Police conducted extensive investigation, including a thorough neighborhood investigation, interviews of all individuals traveling in the area at approximately the same time of day on numerous successive days in an effort to develop any other eyewitnesses. All vacant buildings in the immediate vicinity were searched. The Syracuse, New York, Police Department interviewed all individuals known to have been present in and around the parking lot of the Upstate Medical Center adjacent to the place where Karen Levy was last seen. They also checked on everyone presently residing in Syracuse, New York, by the name of Lacey and anyone who could be located by that name who previously resided in Syracuse and vicinity. They also ran a check on all individuals who advertised for rides similar to Karen Levy to develop any similar situations and checked all newspaper advertisements by males requesting riders in the general time span immediately prior to the disappearance of Karen Levy.

Extensive leads were covered on individuals observed at various bulletin boards where Levy had placed notices. Investigators were sent to all places where any similar case was known, including Boston and New York. Extensive publicity was afforded through the news media. The New York State Police through the only known eyewitnesses, Levy's roommate and her roommate's boy friend, developed a composite photograph of the person known as Bill Lacey,

which was given wide publicity. The New York State Police conducted helicopter and airplane searches over the two probable routes of travel. Both the Syracuse and the New York State Police are continuing to follow all possible leads.

INVESTIGATION BY FBI

As a cooperative measure, the Albany Division of the FBI at the request of the Syracuse Police Department conducted investigation at Oklahoma City, New York City, Chicago, Memphis, Charlotte, Newark, Dallas, Honolulu, and Detroit, eliminating suspects. In addition, Albany contacted all logical sources known to that office.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., March 13, 1974.

KAREN MERLE LEVY—MISSING PERSON

Karen Marle Levy was last seen at the Upstate Medical Center, Syracuse, New York, at approximately 6:00 p.m., November 10, 1972.

NOTIFICATION TO THE FBI

Karen Levy's disappearance was called to the attention of the Albany Division of the FBI on November 13, 1972, by John Begley, private investigator at Syracuse, New York, who had been hired by the victim's family. On the same date, the victim's mother contacted the Newark Division. On November 14, 1972, the Identification Division was requested to place a missing persons notice.

FACTS CONCERNING THE DISAPPEARANCE

Begley said Levy advertised for a ride from Syracuse, New York, to Monmouth College, West Long Branch, New Jersey, on numerous bulletin boards on the Syracuse University campus. On November 10, 1972, Bill Lacey, Lacy (phonetic), who claimed to be a nonstudent and businessman from Livingston, New Jersey, telephonically contacted Miss Levy and agreed to drive her to her destination in New Jersey. They were to meet at the Upstate Medical Center, Syracuse, New York, at 6:00 p.m., Friday. Two fellow students of Levy's accompanied her to the above location, where she did meet an individual who identified himself as Lacey about 6:00 p.m., November 10. Miss Levy was last seen walking with Lacey.

PRESENTATION TO U.S. ATTORNEY

After the interview of Begley, the facts were presented to Assistant United States Attorney Eugene Welch, Northern District of New York, who advised in view of the fact that Miss Levy voluntarily accompanied Lacey there was no violation of the Federal Kidnaping Statute.

[Additional answers to questions contained in Mr. Conyer's lettter of February 25, 1974, to the Attorney General will be found at p. 56.]

Mr. CONYERS. At this point, I would like to place in the record copies of H.R. 4191 and H.R. 8722 together with a copy of the Federal Kidnaping Statute.

[Copies of H.R. 4191, H.R. 8722 and 18 U.S.C. 1201 follow:]

93D CONGRESS
1ST SESSION

H. R. 4191

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1973

Mr. BENNETT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 1201 of title 18, United States Code (relating to kidnapping), to remove from such section the exception relating to abduction of a minor child by a parent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1201 (a) of title 18, United States Code, is amended by striking out "except in the case of a minor by the parent thereof,".

93D CONGRESS
1ST SESSION

H. R. 8722

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1973

Mr. FORSYTHE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 1201 of title 18 of the United States Code to clarify the intent of the Congress by creating a presumption that a person who voluntarily agrees to travel with another to a particular destination, but does not arrive at such destination after a reasonable period of time, is inveigled or decoyed, within the meaning of such section.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1201 of title 18 of the United States Code is amended by adding at the end thereof the following new subsection:

"(D) The failure of a person, who voluntarily agrees to travel with another to a particular destination, to arrive at

that destination after a reasonable period of time from the commencement of such travel, shall create a rebuttable presumption that the person so voluntarily agreeing to travel has been decoyed or inveigled under subsection (a)."

86 Stat. 1072.

TITLE II—KIDNAPING

62 Stat. 760; 70 Stat. 1043.

SEC. 201. Section 1201 of title 18, United States Code, is amended to read as follows:

"§ 1201. Kidnaping

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

"(1) the person is willfully transported in interstate or foreign commerce;

"(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

"(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)); or

84 Stat. 921.

(4) the person is a foreign official as defined in section 1116(b) or an official guest as defined in section 1116(c)(4) of this title, shall be punished by imprisonment for any term of years or for life.

Penalty.

"(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

"(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

SEC. 202. The analysis of chapter 55 of title 18, United States Code, is amended by deleting

"1201. Transportation.",

and substituting the following:

"1201. Kidnaping."

Mr. CONYERS. I would like to call as our first witness, Congressman Charles E. Bennett, a Member from the State of Florida—a Member of the Congress for 26 years. He is chairman of the House Committee on Standards of Conduct, as well as chairman of the Seapower and Real Estate Subcommittee of the Armed Services Committee.

He and I have testified for and against legislation both in the House and in the Senate. He is one of the very steady senior Members of the Congress. He is an author and has introduced a considerable amount of legislation during his rather distinguished career.

I am very pleased to welcome him as our first witness; place his prepared statement into the record; and invite him to proceed in his own way.

TESTIMONY OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. Thank you very much, Mr. Chairman. I appreciate our association here in Congress together. It has been a very rewarding one.

One correction. I am not chairman of the Committee on Standards of Official Conduct. I was chairman of the original committee that was established, but I am not the chairman of it any longer.

If you do not mind, I would like to read the statement I have prepared and then just add some brief comments.

Mr. Chairman, I deeply appreciate the opportunity to testify in support of my bill H.R. 4191 which I introduced on February 8, 1973. This legislation is designed to strengthen existing Federal law by providing a penalty against a parent who abducts his or her minor child from the person who has legal custody of that child.

My bill amends section 1201 of the United States Code relating to kidnaping. Under that law a parent who abducts his minor child across State boundaries is exempt from the penalties and jurisdiction of the Federal kidnaping law. My bill would strike existing language in the Federal kidnaping law which excludes a parent from prosecution. It would provide that a parent who has abducted his child from the person who has legal custody will be prosecutable under the Federal kidnaping law. A very important result would be that the FBI could assist the person who is seeking the return of the child to legal custody.

Due to the absence of any uniform State custody laws there are no adequate penalties provided to deter or to punish parents who abduct their children contrary to court decisions on custody.

If a parent is lucky enough to locate his child and the noncustodial parent, he can, of course, go to that State and attempt to obtain a judgment honoring the original court decree. This court, of course, has no obligation to do this and the legal custodian will have been forced to spend large sums of money in the process.

I have become aware of these problems through the frustrating experiences of many of my constituents. Recently one constituent divorced her husband and was granted custody of her three children; and I will give a brief chronicle of her experiences.

In April 1968, when the children were visiting their father in California he covertly took them and moved to Colorado. In 1969, my constituent got her children back, but only after going to Colorado to file for custody in that State. Her ex-husband was granted visiting rights in Colorado.

In June 1970, the children visited their father in Colorado. He took the children and moved covertly to Washington State. The children were returned to their mother in November 1971, after another legal battle.

On November 13, 1972, the father flew to Jacksonville, Fla., my constituency, went to the children's school, took them out and flew them

to Seattle, Wash. Again it was necessary for my constituent to locate her ex-husband and children, go to that locale and fight to regain the custody of her children. I am not now informed whether she was successful or not but I believe she has been successful.

Situations like this should not occur. The procedures to decide matters of custody in such a case are expensive, nerve-racking and highly unfair to children and their legal guardians.

Sometimes judicial rivalry enters in, as stated by Brigiet M. Bodenheimer in the Vanderbilt Law Review [November 1969, volume 22, No. 6, page 1210–11].

> A judge may often be disinclined to change his own custody decree or that of a colleague on the bench of his own state, but when the decree of another state is involved, there are no external controls to counteract the sense of power and competition that sometimes prevails. The second judge may believe that he can do better for the child—or perhaps better for the local petitioner.

The emotional impact on the child involved in this situation is best expressed by Prof. Homer Clark:

> One of the things that the child's welfare certainly demands is stability and regularity. If he is continuously being transferred from one parent to the other by conflicting court decrees, he may be a great deal worse off than if left with one parent, even though as an original proposition some better provision could have been made for him.

[H. Clark, The Law of Domestic Relations 326, 1968.]

The aid offered by the FBI on a nationwide basis would greatly help to alleviate the problems faced by many children and parents each year. The use of the Federal Court system will give an effective recourse not now available in the awkward and sometimes unattainable quest to find answers in conflicting State jurisdictions. I hope that the committee will take prompt action on this legislation so that it can be passed by the House as soon as possible.

Now, Mr. Chairman, in my serving in the Congress for these last 26 years, I have had numerous cases. I have, I think, probably 10 cases now pending of this nature. Everyone of these cases in the past and the ones that still exist have been exhaustingly painful to the children and to the parent who has had legal custody in trying to get the child back.

In most of the cases, there was also the problem of finances involved in it, in first of all finding out where the other parent is, because a person does not normally kidnap and go to the place he usually lives. He usually goes to some other State or something of that sort. So there is an expensive procedure required to find out where the person is. After you done that, then you have to go into this other jurisdiction.

Most of my constituents are not wealthy people. Today, as high as the cost of living is, anybody who has a family has a little bit of a problem getting by financially. So to add to that the nerve-racking experience of trying to find the person to begin with and then having to litigate in a foreign area where you do not know anybody in the community at all, is almost an impossible thing from the standpoint of nerves and from the standpoint of attainment. And who really suffers are these children who are snatched around the country this way in a sort of semicriminal status, but without any real criminal penalty drawing on the person who does it.

What I am trying to do is to end that. It is a sad situation, indeed, and it ought to be ended. Perhaps in the beginning there was a reason for exempting parents in this matter, but when one parent has legal custody, it is my opinion that in those circumstances that the law should not allow the kidnaping by the other parent of this child.

The result of passing the legislation which I have introduced is primarily for the benefit of the young people who are coming on, the next generation, who deserve a better chance in life than to be snatched back and forth, in a situation that is already bad, with the breaking up of the family. It is already a traumatic experience for the child to experience that, but to experience in addition to that, the covert stealing away in the night, the flight across State boundaries, this sort of thing is a very poor way to start life, and I would like very much for the committee to approve this legislation.

Mr. CONYERS. I appreciate your opening statement, Mr. Bennett.

I would like to raise a couple of questions and invite members of the subcommittee to join the interrogation.

First, is there any indication that these kinds of cases are increasing numerically; second, what are the views of the bar regarding parental kidnaping?

This is essentially a question which affects the various bar associations. The subcommittee is not aware of the views of the Domestic Relations Section of the American Bar Association, and I am sure that all of the members would be interested in the ABA's position on this question. I am apprehensive about this legislation and I must state it candidly.

As you know, when a parent takes his child to any place in violation of a decree of the court or a divorce decree, they are subject to contempt of court. Is this not a more reasonable approach than to create a Federal violation, especially in view of the fact that the kidnaping statute really turns on questions involving the possibility of violence to the individual?

Mr. BENNETT. To answer the last question first, if there were an answer like you suggested, or might be, I would be certainly for a modest answer, if a modest answer could be found, but experience tells us that is not found.

The closest I ever came to finding an answer along the lines that you indicated is the case which I presently have, where the children were stolen from Jacksonville, Fla., taken to Ohio, and now they are attempting—and here is where it rests—we are attempting to see if the Governor of Ohio will accede to the request of the Governor of Florida that this particular person be made amenable to the laws of Florida.

Now, this has been underway for about 2 years. The Governor of Ohio has not directly answered my mail. I have attempted to get at this through Members of Congress who are from Ohio and they have spoken to the Governor.

What normal person in the city of Jacksonville can expect the Governor of Florida and the Governor of another State to be involved in this problem? The Governors have tremendous problems on their shoulders today, and they just really do not get to it when it gets to a thing like this.

This is the closest I have ever come to having the matter handled directly by the court where the custody was established, where the contempt would be operating. If the Governor of Ohio acceded to the request of the Governor of Florida, yes, then, in fact, the contempt proceedings in the State of Florida could in fact apply to the man in Ohio if he were extradited.

But absent that, the only thing the parent can do is start a new legal proceeding in the area where the man lives with the family that he has captured from another State, contrary to court decision. And there you have all kinds of new problems involved. There is a prima facie thing of a local people, local judge, that the family seems to be getting along pretty good as far as anybody knows. The prima facie starts off against the person who has the legal custody. And certainly from the standpoint of finances, the mother, or whoever wants to get the child, has to spend thousands of dollars, if she has it. If she does not have it, I do not know what she does. I guess in those cases she does not do anything. And I have cases like that where it is absolutely impossible for the mother to leave the place where she is living already in Jacksonville and go to California or some place, spend weeks to litigate, find a good lawyer, handle the matter. It is practically impossible.

So the suggestion you make would be good if we had 50 Governors for every State who had more time in the hands of Governors than we now have to handle it directly from the extradition way, 1 Governor from 1 State to another. But it is just not practical to do it. It has never happened in the 26 years I have been here. No man has ever been brought in that way that I know of. Never.

Mr. CONYERS. What about the judge's responsibility when a court order is, in effect, violated by irrational and illegal removal on the part of one of the parents?

Mr. BENNETT. If he can get custody of the man. If he lives in Jacksonville, or wherever the child lives, and flies out that night, there is no court order that goes beyond the border of the State of Florida. That is true of all States. So there is no way of doing it. A new suit has to be established wherever that State is, if you can determine where the State is. You have to first find out where the man flew to.

Mr. CONYERS. This is a vexing problem, no question about it. Have any of the bar associations spoken out about this?

Mr. BENNETT. They have. There are committee studies on this. They are not really very definitive. The bar association has attempted to encourage States to have a uniform custody law and, of course, if we had a uniform custody law of the type the American Bar Association favors, this problem would not be very much of a problem. But my guess is, having looked at uniform laws of this nature, I would say that it would be 10 to 50 years down the road before we had it in every State; and then probably not.

In other words, the probability of any such law being enacted in all States is very remote. It is not going to happen. It is virtuous but it is not going to happen.

Because the State legislatures have other things to do, they have pressing, immediate problems. They have to build a State university in their bailiwick; take care of building highways. There are just

other things more pressing on their shoulders and they just do not get around to doing this sort of thing.

Many State legislators are paid very little money. When I was in the State Legislature of Florida, it paid $180 a year for me to be a legislator. So it really had to be strictly part time because it cost me many thousands of dollars to be elected. Now, of course, it pays much more than that today, but there are still some State legislatures which have underpaid legislators and they only serve for a short period of time. They just do not have time to get into this sort of thing.

Mr. CONYERS. Thank you for causing us to focus on the problem.

I would like to recognize the distinguished gentleman from New York, Mr. Rangel, for any questions.

Mr. RANGEL. Thank you, Mr. Chairman, and thank you, Congressman Bennett.

Your language would merely strike out of the kidnaping statute that part which relates to children. As I read section 1201, it states: "Whoever unlawfully seizes, confines, inveigles, decoys," et cetera. Your amendment, then, would strike out the subsequent language "except in the case of a minor, by a parent thereof."

I assume you are talking about cases in which an outstanding court order awarded child custody to one of the parents?

Mr. BENNETT. I believe that is innate in the word "unlawfully." I believe it is. If it is not, we can improve it. Since it says only unlawful taking, I think that would be so. That is my intention.

Mr. RANGEL. I think the question I would raise is what happens when no court is involved with the custody of the child?

Mr. BENNETT. I think that would be going pretty far to do that without a court order. That would really put the Federal Government in the domestic affairs of the family. But with a court order, it is a different matter. I did have in mind that the law I introduced would apply to court-ordered cases. If the court order said where the child should be, I think it is unlawful to change that by kidnaping.

I do not believe anything is necessary to add to the law I introduced, but if the committee in its wisdom wanted to say "in cases where there has been a decree of custody," all right. But it seems to me the word "unlawfully" used in the basic statute takes care of that.

Mr. RANGEL. You do not think there would be.

Language striking out the clause that refers to parents, you believe, automatically assumes that the unlawful act was a violation of a court order?

Mr. BENNETT. Correct. I think the fact that the basic law says "whoever has been unlawfull seized," et cetera, would take care of that criticism. But if you wanted to say, "except in the case of a minor by the parent thereof, in a case where custody has been awarded," I would have no objection to that.

Mr. RANGEL. I have no further questions.

Mr. CONYERS. The Chair recognizes the distinguished gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman, and thank you, Congressman Bennett.

I certainly understand the nature of the problems you are raising since I have handled a good many cases involving quite similar subjects. It creates great financial problems, as you touched upon and it

invokes the jurisdictional difficulties between competing States. You also touched upon a very serious point, I think from my experience, that the children in most domestic cases, from my experience, tend to become pawns in the hands of angry parents who have fallen out of favor with each other.

You stated that perhaps the original statute had some validity. It seems to me in reading the historical background of this act, that the purpose was to prevent or to make it a Federal crime to take away, seize, carry away, anyone for purposes of ransom, or for purposes of harm, or reward.

The words specifically are "ransom or reward or otherwise." The evil they are trying to prevent, or provide a Federal remedy for, is that of physical harm and violence to the individual. However the thrust of your amendment really goes beyond that primarily because of financial considerations, and also for the purpose of easing the jurisdictional competitiveness.

That is a very large step forward.

The question that I have, based on what I found in certain cases I had, is—suppose the child is not seized or carried away against his will. Many times you have a situation where a young child is in the mother's custody, and suddenly that child does not want to stay with her. He then asks the father, for example, to be taken from the mother's custody. Would you then make that situation a kidnaping as well?

Mr. BENNETT. First, let me address myself to the first observation you made.

Yes, I have studied this somewhat as to the background of this law, and I think when the law was originally enacted it was intended to get at a very heinous, immediate problem facing the Federal Government. I do not think at that time they felt, and I do not think today, that kidnaping for the purpose of getting ransom, like in the Hearst case, is comparable to kidnaping by a parent, contrary to a custodial law.

I do not think they are the same crime. I think the Hearst case is one of the most heinous crimes that can be perpetrated. I think that the crime we are referring to in the statute which I have introduced is a heinous crime, or can be; it can be just as bad, but on the average it would not be as heinous a crime.

That does not mean that in the process of the development of human relationships, there should not be an adequate answer to this problem. And since the law that was passed for a very heinous crime is sufficiently flexible so the penalties do not have to be heavy, heavier than required for a less heinous crime which I am referring to, it is a fine vehicle to have attached to it a penalty for a similar less heinous crime. This would not put any heavier penalties on it than are required by the actual act that occurred.

So my reasoning is that, yes, there was a more heinous crime originally and that led Congress to enact this law. Time has gone by and we now realize with instant communication and instant transportation we have today, that a new situation has arisen which really was not in existence to any great degree back yonder when it really was a cataclysmic thing for a man to move into Georgia, even from Florida, certainly to move to New York State from Alabama.

Today that is no longer so; they do it every day. It is easier to make this flaunting of the law, it is easier to hide from the law, than it was back yonder.

So it is a thing we need to protect against which has arisen; and it is a numerous crime. It happens a lot of times. Therefore, there is a need to take care of it. Since the basic law is not a law which is locked in cement as to the types of penalties, it is a law which is a good law to attach this to. You could have another statute which had to do with this, but it is just as logical to put it here. The penalties are not too hard.

Mr. COHEN. Let me pick this one up again. Let's suppose the evidence were to show a 15-year-old child went voluntarily, or asked to go, with the father or mother and went to another State to live with that parent. Would you then invoke the kidnaping statute?

Mr. BENNETT. Now you have brought back to my memory what you asked me.

Mr. COHEN. That child cannot give legal consent as he is not an adult, but he is mature enough to be dissatisfied with the domestic situation in which he is living in, and therefore wants to live with the other parent. Such a case does not involve taking, seizing, and carrying away, as such. Would you then want to see the Federal kidnaping statute apply to that situation?

Mr. BENNETT. Mr. Cohen, I would want to have the law just as I have introduced it, and I will tell you why. The reason is because the thoughts that you have raised are thoughts that should be legitimately raised before the court that has jurisdiction of the family, the decree, the divorce, or whatever it was that led to the establishment of the child's custody. That is where the thing ought to be heard.

The courts are always open. There is nothing final in any court on this, in any jurisdiction of the United States, with regard to custody of children. This is a thing which is always open, can always be changed, and oftentimes is changed. Circumstances can change. If the custody were given to the woman, she might fall on hard times, or her character might change and she might not be the proper person. She might have a nervous breakdown, she might be unstable and for some reason not her own fault.

These would be things that the court could consider and could change the custody of the child, and that is what should be encouraged to be done, not the covertly taking away of the child in a way in which the original court no longer has jurisdiction.

Mr. COHEN. One other question. Would you by this legislation create the presumption—we are going to have testimony, I understand later this morning in another related facet of this statute—but would your bill thereby create a presumption of interstate travel if one parent, for example, took a child for a ride in a car, on a visitation period, and was gone for more than 24 hours, thereby giving the FBI investigative jurisdiction?

Mr. BENNETT. No. I would not think that is necessary in this case. I think that just the amendment to the law we suggested would take care of every thing. I would not be suggesting there is no need for a statutory presumption to be added to what I suggested. I do not think it is necessary in this case. I am not testifying on the other bill

because I do not know what the other bill is, but I do not think with regard to this bill it is necessary at all.

Mr. COHEN. I am just wondering, from a practical standpoint, when does the FBI become involved? There is a waiting period of 24 hours. If one parent has custody of the child, and visitation of the other parent is allowed, and the child is not returned within 24 hours, does the FBI then become involved at this point?

Mr. BENNETT. There are cases on this relative to what would be an unlawful taking of a child in custody. There are thousands of cases on it.

And, of course, the FBI, you know, does not automatically come into every case the FBI could come into. There is some judgmental decision because of the fact the FBI is not that large. The FBI is only about the size of the police force of Los Angeles County, and so it is just not that large and it cannot handle every case.

Mr. COHEN. That is the problem I am trying to get at, you see. There are so many instances in which parents take children for more than their visitation period that the FBI would be absolutely inundated with cases.

The question I am trying to get at, I suppose, is at what point does the FBI step in? There has to be some evidence that the child is now in another State.

Mr. BENNETT. That is true already.

In the first place, the FBI cannot take everything it has jurisdiction of, neither can the courts, neither can all Congressmen handle everything as fully as we would like to handle it. There are limitations on everything. Therefore, there would not be a compulsion that the FBI would take every one of these cases, because it does not now take all the cases technically under its jurisdiction.

But in the case that you refer to, they would not take it anyway, because there is no showing of interstate activity.

Mr. COHEN. Thank you very much.

Mr. CONYERS. If I might inquire; isn't there presently in the law a presumption of interstate travel after 24 hours?

Mr. BENNETT. There may be under some circumstances.

Mr. CONYERS. The FBI may not be able to enter the case because they have so many other outstanding cases and they probably have to wait, legislatively.

Mr. BENNETT. It is a rule which the FBI, as I understand, lives by. The fact it is 24 hours old does not mean they are going to get in the case.

Mr. CONYERS. The Chair would like to recognize at this point the gentleman from New York, Mr. Fish.

Mr. FISH. Thank you very much, Mr. Chairman.

Mr. Bennett, I congratulate you for bringing this matter to our attention for legislative remedy. I am sure there is not a single Member of the House of Representatives who has not faced this issue with one or more of his constituents. I am sure it has become evident to you, and I think you yourself questioned, whether or not what we are seeking to rectify here is compatible with the strong remedies of the Lindbergh law.

What troubles all of us is that the way you propose to go about this is an amendment to the Lindbergh law, which provides a very stiff criminal penalty. And if we amended that law, it would be invoking penalty for what is a violation of a civil custody decree. I wonder if this route addresses itself to the problem, since removing of the child not in his custody from the jurisdiction of the spouse with custody does not normally involve violence to which the Federal kidnaping statute is essentially directed. Is there some other way we could meet this problem, which is basically one of expense, of time-consuming, legal redtape in getting the child returned?

What I am really asking is whether you have considered any alternatives, a civil remedy, for example, that might meet this problem?

Mr. BENNETT. I do not think there is any civil remedy that will help because there is no jurisdictional power going beyond the State boundaries. It always involves interstate matters, so I cannot see a civil remedy. You get down to whether or not you are going to bring the man back by extraditing him for contempt of court, which is really not civil, but criminal in nature.

Although the Lindbergh law strikes at the hearts of people, when you think about it, because of the horrible crime which gave rise to the enactment of this law, the law does not require horrible penalties. As a matter of fact, it no longer has the penalties the Lindbergh law originally had. You cannot have the death penalty any longer. It is a flexible law. It does not have to be applied in a way which would bring extreme penalties on people.

I must say there is a variation. Just to say this is nothing but a civil procedure falls kind of short of what some of these things are that happen. Some of them are taken physically. Some of them are taken even more traumatically than if they were just bound up with rope. It is a more traumatic experience for a child, it could be, certainly, to be yanked by his father, who is already thought to be a nervous individual under the trauma of the family breakup to begin with.

I am not so sure that is not worse on the child's well-being than some big dumb ox coming and tying his hands up and taking him away. I personally would be a lot more content with some of the people I never met than some of the people I know quite well.

So, I do not know it is any less trauma for the child.

Mr. FISH. Yes. I appreciate your concern for the child. I imagine, though, there are just as many cases where the burden falls on the spouse with the custody facing this expense, often several important factors make recovering a child difficult: the long distance, the suing on a judgment from another jurisdiction, the hiring of attorneys, and perhaps even a trip to the other State.

Mr. BENNETT. I think I expressed what you are saying. When you consider, you and I know that even to hire a lawyer by most American people is a real big deal. They are fraught with worries about this. And when you enter this thing of going into another State where they know nobody, it really takes a man or woman of great courage to do this.

Mr. FISH. I could not agree with you more and because of that, I wonder whether strong imprisonment penalties are going to be help-

ful? If we are dealing with a spouse who is unbalanced, I do not think such penalties would be. I wonder if a deterrent is what we should be looking for here. And I wonder whether it is a deterrent to have an imprisonment penalty for this action, or whether instead we should not be thinking of some way of facilitating the return of a child.

Of course, this is a matter of first impression for this subcommittee. I do not think anybody here has yet come up with any alternative suggestion. But just off the top of my head, I might propose to vest jurisdiction in the Federal courts to expedite the process of returning a child.

Mr. BENNETT. I do not know if you could do that or not, if a law could be constitutionally drawn to just give Federal courts jurisdiction of custodial matters. Maybe it could be done, but I sort of doubt it.

I must say though you do not have to have all of these heavy penalties imposed. And when you look at what happens today, with regard to people who commit rape, murder, mayhem, and sell heroin to people at high schools today and get off trifling little court slaps on the wrist, how could we feel apprehensive about anybody, jury or court, being too hard on the parents.

I just do not think as a realistic matter we have anything to fear because the courts, if anything, have not been as firm as they should be, even with regard to horrendous crimes, and they are not likely to be overly firm about this, in my opinion.

So I think that the law is sufficiently fluid and flexible so that there would not be heavy penalties imposed and I think any apprehension of this is undue apprehension.

Mr. FISH. Thank you, Mr. Chairman.

Mr. CONYERS. The Chair recognizes the gentleman from Wisconsin, Mr. Froehlich.

Mr. FROEHLICH. No questions, Mr. Chairman.

Mr. CONYERS. The Chair recognizes the gentleman from New Jersey, a new member of this subcommittee we are very pleased to have aboard, Mr. Maraziti of New Jersey.

Mr. MARAZITI. Thank you very much, Mr. Chairman. I think you made some very important points here this morning and I concur with the basic point that if a parent takes a child from the State of Florida and disappears, it is almost impossible to provide for the return or have the State of Florida assume jurisdiction.

I think that perhaps there ought to be a remedy, and I think you are looking in the right direction. I am not concerned, as Mr. Fish is, that perhaps the remedy may be a little too severe, but I do think there is room for latitude here.

You are seeking to amend section 1201 of title 18, and that, of course would be the correct section. But looking at the penalty as Mr. Fish pointed out, it seems to me that the penalty there is mandatory, either for any term of years or for life. I am wondering, Mr. Bennett, if you would be agreeable to perhaps adding a separate section to this law, eliminating the very severe penalty, possible penalty for life. Although I do not think any judge would levy that penalty, I do not think we should give anybody a chance to do it. And so we could elimi-

nate the provision of imprisonment for life and add an alternative, giving the court discretion to levy a fine and/or imprisonment, for a limited term of years, for example, not more than 1 or 2 years.

What I am thinking of doing is going on the lines that Mr. Fish has pointed out. We know this was basically the Lindbergh kidnaping statute called for radical remedy and certainly I am for it. I am just throwing out this consideration. I see the merit of your case, and your point, and I am inclined to go along with it, but I would like to put it on a different level. Give the jurisdictional power, provide the remedy if we can, but limit the penalty.

If the committee goes along with that, and I do not know what it will do, do you think that could be worked out?

Mr. BENNETT. I would welcome any improvements that you might have in mind and, conceivably, the exact language you have referred to might be this sort of improvement the committee might want to make.

I would say that I think the cases have held when you have a statute that says term of years, that that can be months as well as years. You might want to say he just had to pay a fine at least.

This does seem to imply you have to serve some time. So if you did not want him to serve time, I would have no objection myself just to say in a new subsection (d), as to penalties in the case of a parent, the penalty shall be restricted to a period of time not in excess of a year, 2 years, something like that, or a fine?

And that might well be an improvement. It might allay the fears of some people that this law would be too broad in applicability. I do not myself really feel it is real bad to require a man to go to jail for a period of time for this kind of a crime. But maybe I am not being as warm hearted as I should be. I have only seen the bad ones, and maybe there are some good ones. Maybe there are some cases where a man had to do this but normally, you see, the man could go into court. He is doing a sneaking thing at best; he can go to court and ask for a change of custody.

Mr. MARAZITI. Thank you.

Mr. CONYERS. Mr. Bennett, as usual, you have raised the kinds of questions that, I think, many citizens are grateful for, far beyond your own congressional district. As I mentioned to my colleagues here, you have been noted throughout your years in the Congress as one who is meticulous in the small matters as well as the large matters that concern your constituents and have a national significance. This is yet another illustration of that very fine characteristic.

I am very grateful for your appearance before the subcommittee, and I thank you very much.

Mr. BENNETT. Thank you, Mr. Chairman. Although in the period of years serving in Congress, I served longer than you, I do not recollect anybody that I can remember here that I think has touched more on the hearts of the Members of Congress, more than you have, in terms of trying to help the people who need help.

Mr. CONYERS. That is very kind of you to say. Thank you again.

Now, I would like to call Representative Edwin Forsythe, as our next witness. Congressman Forsythe is a Member who serves with distinction on the Committee on Education and Labor as well as on the Merchant Marine and Fisheries Committee. He has done a great deal of research in preparation for today's hearing.

We also welcome Mr. and Mrs. Bertram Levy, who were, of course, invited to join their Congressman at the witness table.

Before Congressman Forsythe begins, I would like to place in the record, and bring to the attention of the members of this subcommittee a legal memorandum prepared by the American Law Division of the Congressional Research Service containing an analysis, pro and con, of both H.R. 4191 and H.R. 8722. This document will be entered into the record at this point, as well as a communication from the chairman of the Judiciary Committee, Peter Rodino, Congressman from New Jersey, to the former Acting Director of the Federal Bureau of Investigation, Mr. William Ruckelshaus.

We will put this communication, which bears on the *Levy* case and the legislation before us, into the record.

[The documents referred to follow:]

WASHINGTON, D.C., *May 29, 1973.*

Mr. WILLIAM D. RUCKELSHAUS,
Acting Director, Federal Bureau of Investigation, Department of Justice, Washington, D.C.

DEAR MR. RUCKELSHAUS: As you know, the Federal Bureau of Investigation has received many requests for the Bureau to investigate the disappearance last November of Miss Karen Levy of Cherry Hill, New Jersey. Among those with whom you have had an exchange of correspondence is my colleague, Congressman Edwin B. Forsythe, one of those who has been urging Bureau intervention.

It is my understanding that the Bureau, acting on advice from the United States Attorney for the Northern District of New York, has declined to investigate Miss Levy's disappearance because information available to the Bureau indicated she was not an "unconsenting person" when she accepted an offer of transportation from Syracuse, New York, to West Long Branch, New Jersey.

As I read the kidnaping statute (18 U.S.C. 1201), a kidnaping within the scope of the statute and thus within the investigative jurisdiction of the Bureau can occur when the victim appears to have consented to interstate transportation. Any other reading of the statute would, in effect, read out of the statute the words "inveigled," "decoyed," and "kidnaped."

In support of my interpretation, I direct your attention to Webster's Seventh New Collegiate Dictionary definitions of "inveigled," "decoyed," and "kidnaped." All three definitions make it clear that ingenuity, flattery, enticement, and fraud serve equally with force and absence of consent as bases for Bureau jurisdiction. Different shades of meaning for "inveigled" and "decoyed" are found in the listing of synonyms following the word "lure" on page 504 of the dictionary. Even in the chain of synonyms, we find further words such as "enticing," "artifice," "persuasion," and others which make it clear that the kidnaping statute may be violated without a victim being dragged across the state line, kicking and screaming.

I earnestly request a reappraisal of the Bureau's decision not to investigate the disappearance of Karen Levy and hope that upon such reappraisal that decision will be reversed.

Sincerely yours,

PETER W. RODINO, Jr.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 14, 1974.

To: House Committee on the Judiciary, Attention: Maurice A. Barboza.
From: American Law Division.
Subject: Lindbergh Kidnapping Act: A legislative history and an analysis of H.R. 4191 and H.R. 8722 as proposed amendments.

The following memorandum is in response to your request for a legislative history of the Lindbergh Kidnaping Act, 18 U.S.C. §§ 10, 1201 and 1202, the definition of kidnaping under the Lindbergh Act and elsewhere and pro and con analyses of H.R. 4191 and H.R. 8722 as proposed amendments to the Lindbergh Act.

RICHARD E. ISRAEL,
Legislative Attorney
American Law Division.

I. LEGISLATIVE HISTORY OF THE LINDBERGH ACT, 18 U.S.C. SECS. 10, 1201, AND 1202

In 1932 Congress first enacted legislation making it an offense to knowingly transport in interstate or foreign commerce a person who had been kidnaped for ransom or reward. The act provided for imprisonment for such term of years as the court might choose. Popularly known as the Lindbergh Act, the 1932 enactment was amended in 1934 to extend its application to the knowing transport of persons kidnaped for any reason, not just for ransom or reward. However, while extending the general application of the act, Congress also provided for an exemption of parental kidnaping. The 1934 Amendment also provided for the death penalty upon the jury's recommendation, unless the victim was liberated unharmed, and created a non-conclusive presumption that after seven days a kidnaped person had been transported in interstate or foreign commerce. In 1936 the Lindbergh Act was again amended to make it an offense to knowingly handle ransom money delivered in connection with a violation of the act.

The original Lindbergh Act, as amended, was repealed in the 1948 revision, codification and enactment into positive law of Title 18 of the United States Code. The new secs. 10 (definition of interstate and foreign commerce), 1201 (transporting kidnap victim), and 1202 (handling ransom money) were based on the original 1932 act, as amended, and have been popularly known as the Lindbergh Act. In 1956 18 U.S.C. sec. 1201 was amended to reduce the time period in the presumption of interstate or foreign transport from seven days to twenty-four hours. The Lindbergh Act was last amended in 1972. The 1972 Amendment amended sec. 1201 to make kidnaping itself, rather than the interstate or foreign transport of the victim, the basis of the offense. The 1972 Amendment made the Lindbergh Act applicable to kidnapings where the victim is willfully transported in interstate or foreign commerce, which occur within the special territorial and maritime or aircraft jurisdiction of the United States, or in which the victim is a "foreign official" or "official guest." The 1972 Amendment also deleted the death penalty provision which had previously been held unconstitutional by the Supreme Court. The following is a legislative history of the Lindbergh Act beginning with the original enactment in 1932.

ORIGINAL ENACTMENT OF 1932

The original law which made it an offense to knowingly transport in interstate or foreign commerce a person who had been kidnapped for reward or ransom was enacted in 1932, Act of June 22, 1932, 47 Stat. 326, and became known as the Lindberg Act on account of the well-known Lindbergh kidnaping incident which occurred during the consideration of this legislation.

The 1932 enactment was introduced by Senator Roscoe Patterson on Dec. 10, 1931 as S. 1525. As introduced, S. 1525 made it an offense to transport in interstate or foreign commerce any person who had been unlawfully seized, kidnaped, etc. by any means and held for ransom, reward, or any other unlawful purpose. The bill authorized the imposition of the death sentence or imprisonment in the penitentiary for such term of years as the court might determine. As introduced, S. 1525 also defined interstate and foreign commerce, provided that a person might be convicted in any district where the kidnapped person had been transported, and made it an offense to conspire to violate the act.

S. 1525 was referred to the Senate Committee on the Judiciary, which made several changes in phraseology and the following deletions: (1) the provision that the kidnapped person be held for "any other unlawful purpose." (2) the death penalty provision, and (3) the provision concerning jurisdiction. S. 1525, as amended, was favorably reported on June 1, 1932. S. Sept. 765, 72d Cong., 1st Sess. (1932). The Senate Report stated that the purpose of the bill was, as follows:

> The purpose of this proposed legislation is to assist the States in stamping out the growing menace of kidnaping. Kidnapers often seize a person in one State and transport him into another State. The police officers of the first State have no authority to follow into the second State but are compelled to rely wholly on the efforts of the police officers of the second State. [Senate Report at 1 and 2.]

The Senate considered S. 1525 on June 8, 1932. 75 Cong. Rec. 12318 (1932). After a brief debate concerning the conspiracy provision during which the bill's sponsor, Senator Patterson, explained that this provision did not apply to a conspiracy to kidnap, as such, but to a conspiracy to kidnap a person and convey that person across a State line, the Senate agreed to the Committee's amendments and passed the bill. 75 Cong. Rec. 12318 (1932).

In the House of Representatives, S. 1525 was referred to the Committee on the Judiciary. Prior to this referral, the House Judiciary Committee had considered H.R. 5657 which had been introduced by Rep. John J. Cochran and was identical to S. 1525, as introduced. In addition to changes in phraseology, the committee made two major changes in H.R. 5657 concerning the death penalty and arrest authority. While H.R. 5657 as introduced, provided for the imposition of the death penalty or a term of imprisonment to be determined by the court, the House Judiciary Committee amended the bill to provide for the death penalty, unless the jury recommended mercy, in which case, the penalty was a term of imprisonment to be determined by the court. The committee also added a provision to H.R. 5657 to authorize State and local peace officers, designated by the Governor of the State and appointed by the Department of Justice, to arrest violators of the act in any place in the United States, provided that the State in which the kidnaping allegedly took place bore the cost of such service. The bill, as amended, was favorably reported to the House on June 3, 1932. H. Rept. 1493, 72d Cong, 1st Sess. (1932).

The House of Representatives considered S. 1525 (Senate bill) on June 17, 1932. 75 Cong. Rec. 13282–13304 (1932). In the Committee of the Whole, Rep. Hattan Sumners, the chairman of the Judiciary Committee, moved to substitute the language of H.R. 5657, as reported by the Judiciary Committee (Sumners Substitute), for the language of the Senate bill. The debate in the Committee of the Whole centered on the two major differences between the Senate bill and the Sumners Substitute which were, as follows: (1) while the Senate bill did not provide for the death penalty, the Sumners Substitute provided for such a penalty, unless the jury recommended mercy and (2) while the Senate bill did not provide for authorizing State and local law enforcement officers to make arrests, the Sumners Substitute did so provide.

In the course of the debate Rep. Sumners, with Rep. Homer Hoch, made the point that the proposed legislation was not concerned with kidnaping as such, but with the transport of kidnap victims across State lines. Rep. Sumners made the further point that the problem with which the proposed legislation sought to deal was the inability of State and local law enforcement officers to cross State lines in pursuit of kidnapers. 75 Cong. Rec. 13292 (1932).

With respect to the death penalty provision of the Sumners Substitute, Rep. Sumners defended this provision as a necessary deterrent. 75 Cong. Rec 13294–13295 (1932). It was attacked by Rep. Emanuel Celler on the grounds that the death penalty was not a deterrent, that it was inhumane, that only six States had the penalty for kidnaping itself, and that such a provision would enhance the danger to the life of the victim. 75 Cong. Rec. 13284–13286 and 13294 (1932). Rep. A. J. Montague also attacked the death penalty provision in the Sumners Substitute on the grounds that the jury's involvement in sentencing was contrary to the federal practice of leaving the matter of sentencing to the court. 75 Cong. Rec. 13288 and 13296–13297 (1932). The Committee of the Whole agreed to an amendment of Rep. Celler to delete the death penalty provision from the Sumners Substitute, 75 Cong. Rec. 13296 (1932), and then agreed to an amend-

ment of Rep. Montague to authorize the court to impose either the death penalty or a term of imprisonment. 75 Cong. Rec. 13297 (1932).

The provision in the Sumners Substitute to authorize State law enforcement officers to arrest violators of the act was defended by Rep. Sumners as permitting State law enforcement officers to pursue kidnapers across State lines while keeping federal involvement to a minimum. 75 Cong. Rec. 13291–13292 and 13302. Rep. Montague opposed the provision on the grounds that it was impractical and that federal law enforcement officers should be responsible for enforcing the federal law. 75 Cong. Rec. 13288 and 13301–13303 (1932). An amendment by Rep. Montague to delete the arrest provision from the Sumners Substitute was agreed to by the Committee of the Whole. 75 Cong. Rec. 13303 (1932).

The only other successful substantive amendment was proposed by L. C. Dyer. Rep. Dyer followed the lead of the Senate Judiciary Committee in its amendment of S. 1525 by moving that the words "or held for any other unlawful purpose" be deleted from the phrase in the Sumners Substitute that the kidnap victim be held "for ransom or reward, or held for any other unlawful purpose." He argued that without the deletion, the Sumners Substitute would apply to the kidnaping of a child by its parent. In part, he said:

> Mr. DYER. There is no doubt but that the words ought not be in. I will tell you why: In a good many kidnaping cases the father or the mother of a child, the parents being divorced, goes and takes possession of the child when the court has put it in the custody of the other parent.
>
> I remember 25 years ago, when I was prosecuting as a State's attorney in St. Louis, a case of that kind. There is not anybody who would want to send a parent to the penitentiary for taking possession of his or her own child, even though the order of the court was violated and it was a technical kidnaping. What we are trying to do is to provide the severest punishment for people who kidnap and carry off people from one State to another for ransom, for money. [75 Cong. Rec. 13296 (1932).]

The Committee of the Whole agreed to the Dyer Amendment.

After extensive debate on the Sumners Substitute the Committee of the Whole rejected it as a substitute for the Senate bill. 75 Cong. Rec. 13303 (1932). After rejecting an amendment to the Senate bill to authorize the court to impose either the death penalty or a term of imprisonment, the Committee of the Whole favorably reported the Senate bill to the full House which then approved it. 75 Cong. Rec. 13304. The bill was approved by the President on June 22, 1932. The act read, as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine: *Provided*, That the term "interstate or foreign commerce" shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country; or from a foreign country to any State, Territory, or the District of Columbia: *Provided further*, That if two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy such person or persons shall be punished in like manner as hereinbefore provided by this Act.

The act was codified as 18 U.S.C. sec. 408a (1933 Supp.).

1934 AMENDMENT

In 1934 the Lindbergh Act, as originally enacted in 1932, was amended by an Act of May 18, 1934, 48 Stat. 781, (1) to apply to the knowing transport of persons kidnaped not only for reward or ransom as under the 1932 Act, but for any reason, excepting parental kidnaping, (2) to provide for the death penalty if the jury so recommended, unless the victim was liberated unharmed, and (3) to create a non-conclusive presumption that within seven days a kidnaped person has been transported in interstate commerce.

The 1934 Amendment was introduced in the Senate as S. 2252 on June 11, 1934 by Senators Royal Copeland, Arthur Vandenberg, and Richard Murphy. As introduced, S. 2252 amended the Lindbergh Act to apply to the transport in interstate or foreign commerce of a person kidnaped not only for ransom or reward but also "otherwise." The bill, as introduced, also added a provision to the Lindbergh Act that in the absence of the return of a kidnap victim and the apprehension of his kidnaper(s) within three days, there was a non-conclusive presumption that the victim had been transported in interstate or foreign commerce.

S. 2252 was referred to the Senate Committee on the Judiciary. The committee favorably reported the bill, without amendment, on Mar. 20, 1934. S. Rept. 534, 73rd Cong., 2d (1934). The report explained the purpose of S. 2252, as follows:

> The purpose and need of this legislation are set out in the following memorandum from the Department of Justice:
>
> S. 2252; H.R. 6918: This is a bill to amend the act forbidding the transportation of kidnaped persons in interstate commerce—act of June 22, 1932 (U.S.C., ch. 271, title 18, sec. 408a), commonly known as the "Lindbergh Act." This amendment adds thereto the word "otherwise" so that the act as amended reads: "Whoever shall knowingly transport * * * any person who shall have been unlawfully seized * * * and held for ransom or reward or otherwise shall upon conviction, be punished * * *." The object of the addition of the word "otherwise" is to extend the jurisdiction of this act to persons who have been kidnaped and held, not only for reward, but for any other reason.
>
> In addition, this bill adds a proviso to the Lindbergh Act to the effect that in the absence of the return of the person kidnaped and in the absence of the apprehension of the kidnaper during a period of 3 days, the presumption arises that such person has been transported in interstate or foreign commerce, but such presumption is not conclusive.
>
> I believe that this is a sound amendment which will clear up border-line cases, justifying Federal investigation in most of such cases and assuring the validity of Federal prosecution in numerous instances in which such prosecution would be questionable under the present form of this act. [Senate Report at 1.]

The Senate considered S. 2252 on March 29, 1934 and passed the bill, as introduced and reported, without debate. 78 Cong. Rec. 5734.

In the House of Representatives, S. 2252 was referred to the Committee on the Judiciary. The committee accepted the provision in S. 2252 to extend the act to the transport of persons kidnaped not only for ransom or reward but also "otherwise," but the committee specifically added a provision to exclude parental kidnapings from this extension. The committee also amended S. 2252 to permit the jury to impose the death penalty unless the kidnaped victim has been liberated unharmed and to provide for a presumption of transport in interstate commerce after seven days rather than three. The committee favorably reported the bill, as amended, on May 3, 1934. H. Rept. 1457, 73rd Cong., 2d Sess. (1934). The report did not explain the purpose of the parental kidnaping exemption nor the death penalty provision, but did contain the following explanation on the presumption.

> The purpose of this provision is to clear up border-line cases, justifying Federal investigation in most of such cases and assuring the validity of Federal prosecution in numerous instances in which such prosecution would be questionable under the present form of this act. The legality of such a presumption would seem to be fairly within the rule established by the United States Supreme Court in Mobile * * * *Railroad Co.* v. *Turnipseed*, (219 U.S. 35):
>
> That a legislative presumption of one fact from evidence of another may not constitute a denial of due process or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. [House Report at 2.]

The House of Representatives considered S. 2252, as amended and reported, on May 5, 1934. 78 Cong. Rec. 8127–8128 (1934). The House accepted the committee's amendments to S. 2252 and an amendment by Rep. Wesley Lloyd to change the penalty provision from a term of imprisonment or death upon the jury's recommendation to death upon the jury recommendation, or if not death, then a term of imprisonment. Following a brief debate on the application of

the bill to persons who conceal kidnap victims who have already been taken across State lines, the House passed S. 2252, as amended. 78 Cong. Rec. 8128 (1934).

A conference committee subsequently recommended S. 2252, as passed by the House H. Rept. 1595, 73rd Cong., 2d Sess. (1934). The House agreed to the conference report on May 14, 1934. 78 Cong. Rec. 8778 (1934). The Senate agreed to the conference report on the following day. 78 Cong. Rec. 8856 (1934). The act was approved by the President on May 18, 1934. The Lindbergh Act, as amended in 1934, read as follows:

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: *Provided*, That the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.
>
> SEC. 2. The term "interstate or foreign commerce", as used herein, shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.
>
> SEC. 3. If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy, such person or persons shall be punished in like manner as hereinbefore provided by this Act.

Sec. 1 of the 1934 Act was codified at 18 U.S.C. sec. 408a (1934 ed.), Sec. 2 at 18 U.S.C. 408b (1934 ed.), and sec. 3 at 18 U.S.C. sec. 408c (1934 ed.).

1936 AMENDMENT

The Lindbergh Act, as amended in 1934, was further amended in 1936 by adding a provision to make it an offense to knowingly handle ransom money or property delivered in connection with a violation of the Act. Act of Jan. 24, 1936, 49 Stat. 1099. The 1936 Amendment was introduced as S. 2421 by Senator Henry Ashurst at the request of the Department of Justice. As introduced, S. 2421 provided, as follows:

> SEC. 4. Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1 of this Act, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be punished by a fine of not more than $10,000 or imprisonment in the penitentiary for not more than ten years, or both.

S. 2421 was referred to the Committee on the Judiciary which reported the bill favorably and without amendment on June 4, 1935. S. Rept. 779, 74th Cong., 1st Sess. (1935). The report simply reprinted the following letter to Senator Ashurst:

> MY DEAR SENATOR: I enclose herewith a draft of a bill to amend the so-called "Federal Kidnaping Act" so as to make it a crime to receive, possess, or dispose of the ransom money.
>
> The present law is inadequate to reach persons handling ransom money. The proposed amendment would make such persons accessories after the fact to a violation of the Kidnaping Act.
>
> I shall be glad if you will introduce this bill and lend it your support.
>
> Sincerely yours,
>
> HOMER S. CUMMINGS, *Attorney General.*

The Senate considered S. 2421 on June 10, 1935 and passed the bill without debate or amendment. 79 Cong. Rec. 8966 (1935).

In the House of Representatives, S. 2421 was referred to the Committee on the Judiciary which reported the bill favorably and without amendment on August 7, 1935. H. Rept. 1719, 74th Cong., 1st Sess. (1935). The report also reprinted a letter from Attorney General Cummings to Rep. Hatton Sumners, chairman of House Judiciary Committee which was identical to the letter sent to Senator Ashurst. The House considered S. 2421 on Jan. 20, 1936 and passed the bill without amendment or debate. 80 Cong. Rec. 742 (1936). The President approved the bill on Jan. 24, 1936 and the law was codified at 18 U.S.C. Sec. 408c–1 (1939 Supp.).

1948 REVISION AND CODIFICATION

In 1948 Title 18 of the United States Code was revised and codified and enacted into positive law. Act of June 25, 1948, 62 Stat. 683. The original Lindbergh Act of 1932, as amended in 1934, had previously been codified at 18 U.S.C. secs. 408a (transporting kidnap victim), 408b (definition of interstate and foreign commerce), and 408c (conspiracy). In the 1948 revision and codification, 18 U.S.C. sec. 408b became, with some modification, 18 U.S.C. sec. 10 (definition of interstate and foreign commerce). The two remaining sections, 18 U.S.C. secs. 408a and 408c, were consolidated, with some modification, into one new section, 18 U.S.C. sec. 1201. The 1936 Amendment, concerning the receipt of ransom money, which had been codified at 18 U.S.C. sec. 408c–1 became with slight modification, 18 U.S.C. sec. 1202. The original act, as amended, was repealed.

The 1948 revision and codification of Title 18 was introduced on April 24, 1947 as H.R. 3190 by Rep. John Marshall Robison. As introduced, sec. 10 provided:

> The term "interstate commerce," as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession or the District of Columbia.
>
> The term "foreign commerce," as used in this title, includes commerce with a foreign country.

Sec. 1201 provided:

> (a) Whoever knowingly transports in interstate or foreign commerce any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.
>
> (b) The failure to release the victim within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.
>
> (c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (a).

Sec. 1202 provided:

> Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Sec. 22 of the bill repealed the original Lindbergh Act of 1932, as amended in 1934 and 1936.

H.R. 3190 was referred to the Committee on the Judiciary on April 24, 1947 and was, the same day, favorably reported, without amendment to the House. H. Rept. 304, 80th Cong., 1st Sess. (1947). The report contains the following reviser's notes on secs. 10, 1201, and 1202.

Section 10—Section revised

> Based on title 18, U.S.C., 1940 ed., §§ 408, 408b, 414(a), and 419a (b) (Oct. 29, 1919, ch. 89, § 2 (b), 41 Stat. 325; June 22, 1932, ch. 271, § 2, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 782; May 22, 1934, ch. 333, § 2 (a), 48 Stat. 794; Aug. 18, 1941, ch. 366, § 2 (b), 55 Stat. 631).

This section consolidates into one section identical definitions contained in sections 408, 408b, 414 (a), and 419a (b) of title 18, U.S.C., 1940 ed.

In addition to slight improvements in style, the word "commerce" was substituted for "transportation" in order to avoid the narrower connotation of the word "transportation" since "commerce" obviously includes more than "transportation." The word "Possession" was inserted in two places to make the definition more accurate and comprehensive since the places included in the word "Possession" would normally be within the term defined and a narrower construction should be handled by express statutory exclusion in those crimes which Congress intends to restrict to commerce within the continental United States.

Section 1201—Section revised

Based on title 8, U.S.C., 1940 ed., §§ 408a–408c (June 22, 1932, ch. 271, §§ 1, 3, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 781, 782).

Section consolidates sections 408a and 408c of title 18, U.S.C., 1940 ed.

Reference to persons aiding, abetting or causing was omitted as unnecessary because such persons are made principals by section 22 of this title.

Words "upon conviction" were omitted as surplusage, because punishment cannot be imposed until conviction is secured.

Direction as to confinement "in the penitentiary" was omitted because of section 4082 of this title which commits all prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.).

The phrase "for any term of years or for life" was substituted for the words "for such term of years as the court in its discretion shall determine" which appeared in said section 408a of Title 18 U.S.C., 1940 ed. This change was made in order to remove all doubt as to whether "term of years" includes life imprisonment.

Minor changes were made in phraseology.

Section 1202—Section revised

Based on title 18, U.S.C., 1940 ed., § 408c–1 (June 22, 1932, ch. 271, § 4, as added Jan. 24, 1936, ch. 29, 49 Stat. 1099).

Words "in the penitentiary" after "imprisoned" were omitted in view of section 4082 of this title committing prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title).

Minor changes were made in phraseology.

H.R. 3190 was considered by the House of Representatives on May 12, 1947. 93rd Cong. Rec. 5048–5049 (1947). Following a brief explanation of the bill by Rep. Robison and the adoption of an amendment to increase the membership on the parole board from three to five, the House passed the bill. 93rd Cong. Rec. 5049 (1947).

In the Senate, H.R. 3190 was referred to the Committee on the Judiciary. The committee amended the bill but none of these amendments affected secs. 10, 1201 or 1202. The committee favorably reported the bill, as amended, on June 14, 1948. S. Rept. 1620, 80th Cong., 2d Sess. (1948). The Senate considered H.R. 3190, as amended and reported, on June 18, 1948. 94 Cong. Rec. 8721–8722 (1948). Following a brief explanation of the bill by Sen. Alexander Wiley, the Senate agreed to the committee's amendments and passed the bill. 94 Cong. Rec. 8722 (1948). The same day the House agreed to the Senate amendments. 94 Cong. Rec. 8865 (1948). The President approved the bill on June 25, 1948.

1956 AMENDMENT

In 1956 18 U.S.C. sec. 1201(b) was amended to provide that the failure to release a person within twenty-four hours after he has been unlawfully kidnaped creates a rebuttable presumption that such person has been transported in interstate or foreign commerce. Act of Aug. 6, 1956, 70 Stat. 1043. Prior to this amendment, sec. 1201(b) provided for such a presumption after a seven day period.

The 1956 Amendment to substitute the twenty-four hour period for the seven-day period was introduced as H.R. 800 by Rep. Kenneth Keating. H.R. 800 was referred to the Committee on the Judiciary which reported the bill favorably and without amendment on July 18, 1956. H. Rept. 2763, 84th Cong., 2d Sess. The report contained the following statement on the purpose of the bill,

The purpose of the bill is to amend subsection (b) of section 1201 of title 18, United States Code, in order to provide that the Federal Bureau of Investigation may officially enter the investigation of a violation of section 1201(a) of title 18, United States Code—the kidnaping statute—within 24 hours after the victim shall have been kidnaped, instead of 7 days as provided under existing law. [House Report at 1.]

The report contains the following discussion of the original of the presumption:

The substantive crime of kidnaping was enacted into law by the act of June 22, 1932 (47 Stat. 327). That act did not provide for the creation of the rebuttable presumption, predicated upon the failure to release the victim within 7 days after the occurrence of the crime, that the victim had been transported in interstate or foreign commerce. Federal jurisdiction in that act was predicated upon the actual transportation of the victim in either interstate or foreign commerce.

The act of May 18, 1934, amended the existing law by creating a rebuttable presumption that the failure to release the victim within 7 days after he shall have been kidnaped, in violation of section 1201, that such person had been transported in interstate or foreign commerce. The effect of that amendment was to permit the Federal Bureau of Investigation to initiate officially an investigation of a violation of section 1201, of title 18, United States Code, 7 days after the date the crime was committed. The jurisdiction of the Federal Government arose out of the rebuttable presumption that the kidnaped person had been transported in interstate or foreign commerce because he had not been released within 7 days after being kidnaped.

That presumption, of course, was not conclusive; it was a presumption of fact which could be rebutted by credible evidence. In addition, the amendment had for its purpose the clearing up of borderline cases justifying Federal investigation in most of such cases, and assured the validity of Federal prosecutions in which prosecution might be questionable under the then present form of the statute. Moreover, the legality of such a presumption was clearly within the case law established by the United States Supreme Court. [House Report at 2.]

The need for the bill was described, as follows:

However, during the past few years kidnapings have occurred which have unfortunately resulted in the deaths of innocent victims. Without criticizing any law enforcement agency, it is the opinion of the committee that the efficient work of the Federal Bureau of Investigation, had it been able to initiate its official investigations prior to the statutory period of 7 days after the date of occurrence, might well have prevented the tragic deaths of the victims. The mere apprehension and conviction of these criminals is one aspect of the problem. The other is to preserve the life of the victim. Another factor to be considered which, in the opinion of the committee, strengthens the need for the proposed bill, is the recognition of the world-wide reputation of the Federal Bureau of Investigation for the apprehension and conviction of kidnapers. The fact that a potential kidnaper would be cognizant of the fact that the Federal Bureau of Investigation would take up his trail within 24 hours after the commission of the crime should prove to be a deterrent in the minds of those criminals.

There appears to be no valid reason why the Federal Bureau of Investigation should be compelled to stand by for 7 days after the date of the occurrence of the crime before initiating an official investigation. Here it should be noted that when subsection (b) of the present statute was enacted into law the Senate version of that act provided that the Federal Bureau of Invesigation should initiate its investigation within a period of 3 days after the kidnaping. The report which accompanied the bill as it was reported by the House does not explain why the change was made from 3 to 7 days. It can only be surmised that the 7-day period was a compromise. [House Report at 2–3.]

The House of Representatives considered the bill on July 23, 1956. 102 Cong. Rec. 14022–14023. The House passed the bill without amendment and with only brief comment by several members following passage of the bill.

In the Senate, H.R. 800 was referred to the Committee on the Judiciary. The committee reported the bill favorably and without amendment on July 27, 1956. The Senate report substantially duplicates the language of the House report.

The Senate considered H.R. 800, as reported, on July 27, 1956. 102 Cong. Rec. 15041 (1956). The Senate passed the bill without amendment after a brief explanation by Sen. James Eastland. The bill was approved by the President on August 6, 1956.

1972 AMENDMENT

In 1972 18 U.S.C. sec. 1201 was amended to make kidnaping itself rather than the transport in interstate or foreign commerce of a kidnaped person the gist of the offense. Sec. 1201 was amended to cover kidnapings in which the person is willfully transported in interstate or foreign commerce, which occur within the special maritime and territorial jurisdiction of the United States, which occur in the special aircraft jurisdiction of the United States or where the vicitim is a foreign official or official guest. The 1972 Amendment also deleted the death penalty clause of sec. 1201, which provided for punishment "by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend," or, if the death penalty were not imposed, imprisonment for any term of years or for life. The Supreme Court had previously held in *United States* v. *Jackson*, 390 U.S. 570 (1968) that the death penalty clause of 18 U.S.C. sec. 1201 was unconstitutional on the grounds that it discouraged the assertion of the Fifth Amendment right not to plead guilty and the Sixth Amendment right to demand a jury trial. Finally, the 1972 Amendment modified the penalty provision for the conspiracy offense to provide for imprisonment for any term of years or life. The 1972 Amendment to 18 U.S.C. sec. 1201 was enacted as Title II of the Act for the Protection of Foreign Officials and Official Guests of the United States, Pub. L. 92-539, Oct. 24, 1972, 86 Stat. 1070, a comprehensive act for the protection of foreign officials, guests, and property.

The 1972 Amendment was introduced in the House of Representatives by Rep. Richard Poff for himself and others as Title II of H.R. 15883, an Act for the Protection of Foreign Officials. As introduced, Title II of H.R. 15883 amended 18 U.S.C. sec. 1201 in the manner already described with reference to the final enactment, except that H.R. 15883, as introduced, applied only to the kidnaping of "foreign officials" and not "foreign guests". H.R. 15883 was referred to the Committee on the Judiciary. The committee amended the bill but none of these amendments affected Title II. The bill was favorably reported on July 31, 1972. H. Rept. 92-1268, 92d Cong., 2nd Sess. With reference to Title II, the report states:

> In connection with the amendments extending protection to foreign officials the bill H.R. 15883, as amended, by the committee in title II would make a number of changes in the Federal kidnaping statute (18 U.S.C. 1201). Under existing law, the gist of the offense is the transportation of a person in interstate or foreign commerce, rather than the actual kidnaping. As contained in the amended bill the section would make the kidnaping itself the gist of the offense. This change will assist in extraditing kidnapers from foreign countries. Under extradition treaties, an offense is extraditable only if the crime for which extradition is sought is listed in the treaty. Because most countries do not have a Federal system such as ours, the treaties do not recognize the crime of interstate transportation of a kidnaped person. By redrafting the section in terms of kidnaping rather than transportation extradition of these offenses will be facilitated.
>
> Additional bases of Federal jurisdiction over kidnaping have been added, consistent with the general purpose of the bill. Consistent with the basic purpose of this bill to protect foreign officials, kidnaping of foreign officials and members of their families would be covered by Federal laws. At the hearing it was noted that there has been a rash of kidnapings of diplomats in a number of countries throughout the world in the past few years. While they have not occurred in this country, the committee agrees that it is advisable to insure that the Federal Government could act promptly if such a thing should happen here.
>
> Jurisdiction is asserted also over kidnaping occurring in the special maritime and territorial jurisdiction of the United States. This jurisdiction already exists with respect to other crimes against the person, such as murder (18 U.S.C. 1111) and assault (18 U.S.C. 113). It is anomalous that kidnaping is not covered in the same manner. Jurisdiction would also be extended by H.R. 15883 to kidnaping occurring in the special airspace of the United States. This would cover, for example, kidnapings incident to aircraft hi-jackings and would permit extradition in those cases where a treaty covers kidnaping but not aircraft hi-jacking. While it is true that the Senate has

ratified the Convention for Suppression of Unlawful Seizure of Aircraft. (Congress has not yet enacted the implementing legislation. (S. 2280. H.R. 9354). Moreover, it is relevant to note that extradition under the Convention and legislation would only be available as between nations that are parties to the Convention. [House Report at 10–11.]

H.R. 15883, as reported, was considered by the House of Representatives on Aug. 7, 1972, 118 Cong. Rec. H 7232–H 7240 (daily ed. Aug. 7, 1972). In the debate Rep. Harold Donohue repeated the above-quoted excerpt from the committee report and Rep. Poff made the following observations on the application and nature of the proposed sec. 1201:

Mr. POFF. Mr. Speaker, in response to the question posed by the gentleman from Iowa (Mr. Gross), I think it should be understood that the kidnaping provision in this bill relating changes in the Lindbergh law substantially and in some respects the consequences are the same for foreign officials as domestic citizens. The changes are ones of defining the Federal jurisdiction of the offense. The present Lindberg law takes as the gist of its definition the movement of the victim in interstate commerce. The title in this bill changes the gist to be wrongful conduct—the seizure and taking away of the victims and then fixes several jurisdictional bases in addition to movement of the victim in interstate commerce, such as seizures within the special maritime and territorial jurisdiction of the United States, or within the special aircraft jurisdiction of the United States. The kidnaping of a foreign official would be a separate jurisdictional base. [118 Cong. Rec. H7235 (daily ed. Aug. 7, 1972).]

In the course of the debate, Rep. Poff also noted that on account of the Supreme Court's decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972), provisions for the death penalty in an earlier bill, H.R. 10502, had been deleted pending a complete review of the death penalty matter. 118 Cong. Rec. H 7236–H 7237 (daily ed. Aug. 7, 1972). At the conclusion of the debate, the House passed the bill. 118 Cong. Rec. H 7240 (daily ed. Aug. 7, 1972).

In the Senate, H.R. 15883 was referred to the Committee on the Judiciary. With reference to Title II, the committee amended sec. 1201 to cover the kidnaping of "official guests" as well as "foreign officials." The bill was favorably reported on Sept. 8, 1972. S. Rept. 92–1105, 92d Cong. 2d Sess (1972). With respect to sec. 1201, the report states:

In broad terms, the instant measure would—

(2) Make the kidnaping of a foreign official, a member of his family, or an official guest, or conspiracy to kidnap such an individual, a Federal felony if committed anywhere in the United States.

* * *

(7) Make several changes in the Federal kidnaping law as it will apply generally. In this regard, the law is amended to make the thrust of the offense the kidnaping itself rather than the interstate transporting of the kidnaped person. This effort to clearly differentiate the question of what is criminal from the question of what criminal behavior falls within Federal jurisdiction not only makes the sanction more rational but also has the practical effect of assuring that a kidnaping which occurs in a hijacking situation is an extraditable offense from a country which does not recognize an offense keyed to interstate transportation. [Senate Report at 8.]

The bill was considered by the Senate on Sept. 18, 1972, 118 Cong., Rec. S15118–S15127 (daily ed. Sept. 18, 1972), and without further amendment to Title II and only brief comment on Title II, the bill was passed. 118 Cong. Rec. S15127 (daily ed. Sept. 18, 1972). The conference report on H.R. 15883 accepted the Senate's extension of the bill to protect "official guests", including protection of such guests from kidnaping. H. Rept. 92–1485, 92d Cong., 2d Sess. (1972). The Senate agreed to the report on Oct. 2, 1972, 118 Cong. Rec. S16569 (daily ed. Oct. 2, 1972), and the House agreed on the report on Oct. 11, 1972, 118 Cong. Rec. H. 9669 (daily ed. Oct. 11, 1972).

II. KIDNAPING AS DEFINED UNDER THE LINDBERGH ACT AND ELSEWHERE

Until the 1972 Amendment of the Lindbergh Act, 18 U.S.C. secs. 10,1201 and 1202, the transportation of a kidnap victim in interstate or foreign commerce was regarded as the basis of the offense. Under the 1972 Amendment kidnaping itself is regarded as the gist of the offense. Neither the pre-1972 statute nor the

statute, as amended in 1972, has defined the offense of kidnaping. Moreover, until the passage of the 1972 Amendment, the concept of kidnaping was not even discussed in the enactment of the statute and its various amendments. In the passage of the 1972 Amendment, the report of the House Judiciary Committee indicates, H. Rept. 92–1268, 92d Cong., 2d Sess., that a broad definition of kidnaping was contemplated. The report states:

> Although the terms "kidnaping" has acquired a general meaning sufficient to encompass the operative term "seizes", "confines", etc. (compare 18 U.S.C. 351), for clarity the present terminology of 18 U.S.C. 1201 is retained. [House Report at 16.]

A similar statement is found in the report of the Senate Judiciary Committee. S. Rept. 92–1105, 92d Cong., 2d Sess. at 17.

In the cases prior to the 1972 Amendment the courts have only rarely defined what is meant by the "kidnaping" of a person who is then transported in interstate or foreign commerce. In *Chatwin* v. *United States*, 326 U.S. 455 (1946) the Supreme Court did interpret the requirement that the victim have been seized, kidnaped, etc." and "held" for ransom, reward, or otherwise. The Court concluded that an involuntary seizure and detention or holding are the essential elements of the offense of kidnaping. *Chatwin* at 464. This definition is broader than others which are found in modern statutes and proposed statutes, which are discussed subsequently. With the enactment of the 1972 Amendment, which makes kidnaping itself the gist of the crime, there may be further litigation on the meaning of this term. However, there have been no reported cases since its passage which have sought to define "kidnaping."

With respect to definitions of kidnaping outside the act, at Common Law kidnaping was defined as the "forcible abduction or stealing away of a man, woman or child from their own country, and sending him into another." 4 *Blackstone, Commentaries on the Laws of England* 200 (1813 ed.) F. W. Perkins in his book, *Criminal Law* (2d ed. 1969), notes that modern statutes have commonly provided for three different kinds or grades of the offense: (1) simple kidnaping, (2) kidnaping for ransom, and (3) child stealing. While at Common Law the essential elements of kidnaping were unlawful confinement plus asportation, that is a carrying away, the second element, while still required has been substantially modified in simple kidnaping statutes, requiring, for example, simply a "carrying from one place to another." Such simple kidnaping statutes commonly require only a general rather than specific criminal intent. In some simple kidnaping statutes, the element of asportation is replaced with the requirement of an intent to secretly confine the victim. Perkins at 177–178.

Kidnaping for ransom is an aggravated form of simple kidnaping. Thus, in addition to the elements of an unlawful seizure and secret confinement there is also the element of the extortion of a ransom. Perkins at 180. The Model Penal Code (Proposed Official Draft) limits kidnaping to such an aggravated form requiring either an unlawful asportation or secret confinement for one of four purposes. Sec. 212.1 of the Code provides:

> A person is guilty of kidnaping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:
>
> (*a*) to hold for ransom or reward, or as a shield or hostage; or
>
> (*b*) to facilitate commission of any felony or flight thereafter; or
>
> (*c*) to inflict bodily injury on or to terrorize the victim or another; or
>
> (*d*) to interfere with the performance of any governmental or political function.
>
> Kidnaping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. A removal of confinement is unlawful within the meaning of this Section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

The Brown Commission report on the revision of the federal criminal code also limits the offense of kidnaping to an aggravated form. Sec. 1631 provides:

> (1) Offense. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him, with intent to do the following:

(a) hold him for ransom or reward;
(b) use him as a shield or hostage;
(c) hold him in a condition of involuntary servitude;
(d) terrorize him or a third person;
(e) commit a felony or attempt to commit a felony; or
(f) interfere with the performance of any government or political function.

(2) Grading. Kidnapping is a Class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a Class B felony.

"Restrain" and "abduct" are defined in sec. 1639, as follows:

(a) "restrain" means to restrict the movements of a person unlawfully and without consent, so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by (i) force, intimidation or deception, or (ii) any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement;

(b) "abduct" means to restrain a person with intent to prevent his liberation by (i) secreting or holding him in a place where he is not likely to be found, or (ii) endangering or threatening to endanger the safety of any human being.

The third type of kidnaping statute concerns child stealing and is commonly defined as the taking, leading, enticing or detaining of a child under a specified age with the intent to keep or conceal it from its parent, guardian or other person having lawful custody of the child. Cases arising under such statutes frequently involve one parent taking a child from the other. However, there is a parental exception so that in the absence of a judicial decree granting custody to one parent, the taking of the child by the other parent does not violate the statute. Perkins at 181.

III. Pro and Con Analysis of H.R. 4191

H.R. 4191 would amend the Lindbergh Act to repeal the Act's parental kidnaping exemption. In this regard, the bill provides for the deletion of the words "except in the case of a minor by the parent thereof" from 18 U.S.C. sec. 1201(a), which, in part, now reads as follows:

> Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof . . .

ARGUMENT IN FAVOR OF H.R. 4191

The general rule in the law of kidnaping is that a parent who takes a child from another to whom custody has been awarded by a court has committed the offense of kidnaping. 1 *Wharton, Criminal Law and Procedure* 745 (12th ed. 1957). The same rule also prevails with respect to child stealing statutes. Perkins, *Criminal Law* 181 (2d ed. 1969). See discussion p. 31. This rule is soundly premised on the principle that a parent's consent to the taking of a child is a defense to a charge of kidnaping, the child being incapable of giving his consent, but that where one parent has been awarded custody only that parent may consent to a taking.

The rule that a parent who takes a child from another who has been awarded custody commits the offense of kidnaping is entirely consistent with the principles of the criminal law concerning offenses among family members. For while the doctrine of family immunity has had widespread, though ever narrowing, applicability in tort law, Prosser, *Law of Torts* 859–869 (4th ed. 1971), it has had only the most limited application in the criminal law. Thus, in relation to the general rule on the parental taking of a child whose custody is with another parent and in relation to the criminal law principles on offenses among family members, the parental exemption in the Lindbergh Act is an anomally.

The repeal of this anomally in federal law is particularly important because parental kidnaping commonly involves a crossing of State lines. Thus, even though State laws generally make such kidnapings an offense, the States cannot effectively enforce such law where the kidnaping parent has fled the jurisdiction. Moreover, with the 1972 Amendment to the Lindbergh Act, it is clear that kidnaping, itself, as well as unlawful seizures, confinements, etc. have become a matter of federal interest.

ARGUMENTS AGAINST H.R. 4191

While it is true that the general rule is that a parent who takes a child from another to whom custody has been awarded commits the offense of kidnaping, this rule has been statutorily modified in some jurisdictions. 1. *Wharton, Criminal Law and Procedure* 745 (12th ed. 1957). Moreover, it is a well settled principle that a final decree awarding the custody of a child may be modified, either by the court entering the decree or by a court in another jurisdiction, upon a showing of a change of circumstances affecting the welfare of the child. 2 *Nelson Divorce and Annulment* 304–313 (1961 ed.). Thus, the application of the Lindbergh Act to a parental kidnaping where the other parent had been awarded custody might well lead to the anomalous situation in which the parent charged with kidnaping subsequently gains lawful custody of the kidnaped child through a modification of the award.

If the repeal of the parental exemption is interpreted to make the Lindbergh Act applicable to any parental kidnaping, seizure, etc. including a parental taking from the other parent where there has been no judicial award of custody, the problem becomes even more acute. The general rule in the law of kidnaping is that in the absence of an order or decree affecting the custody of a child, a parent who takes a child from another does not commit the offense of kidnaping. 1 *Wharton, Criminal Law and Procedure* 744 (12th ed. 1957). The same rule applies with respect to child stealing statutes. Perkins, *Criminal Law* 181 (2d ed. 1969). This rule is, of course, just the reverse of the rule where there has been such an award. Thus, the repeal of the parental exemption and the application of the Lindbergh Act to any parental kidnaping, seizure, etc. would, in cases where the taking was from another having judicially awarded custody, lead to anomalous results on account of the rule allowing a subsequent modification of such awards and would, in cases where the taking was from another not having judicially awarded custody, completely contravene the general rule that such takings are neither kidnapings nor child stealings.

Aside from the legal considerations, there are also policy reasons for opposing H.R. 4191. Passage of the bill would inevitably lead to the widespread involvement of the FBI in what are usually child custody disputes. The repeal of the parental exemption would also overturn a Congressional policy of forty years whose wisdom has been recognized by the courts.

In the enactment of the original Lindbergh Act in 1932, a provision concerning kidnaping for any reason was deleted in the Senate, and in the House such a deletion was made in its own bill for the express purpose of excluding parental kidnapings from coverage of the Act. See Part I, Legislative History of the Lindbergh Act, p. 7 on the Dyer Amendment. When Congress did extend coverage of the Act to kidnapings for any reason, parental kidnapings were expressly excluded. See Part I, Legislative History of the Lindbergh Act, pp. 9–12 on 1934 Amendment. The wisdom of this exemption was recognized in the case of *Miller* v. *United States*, 123 F. 2d 715 (8th Cir. 1941); Suppl. opinion, 124 F. 2d 849 (8th Cir. 1942); Suppl. opinion, 126 F. 2d 462 (8th Cir. 1942), 317 U.S. 192 (1942), rev. on other grounds; 317 U.S. 713 (1943), reh. den.; 138 F. 2d (8th Cir. 1943); conviction aff'd., where the Court of Appeals said:

> This statute as first enacted, June 22, 1932, was limited to cases of kidnaping for reward or ransom. Later, on May 18, 1934, the act was amended so as to extend jurisdiction to cases where a person was kidnaped by any means and held for ransom or reward *or otherwise, except, in the case of a minor by a parent thereof.* (The italicized portion indicates the amendment). Manifestly, the exception noted was prompted by the extension of federal jurisdiction to all kidnaping involving interstate commerce, regardless of the purpose for which the kidnaped person was held. *Gooch* v. *United States*, 297 U.S. 124, 56 S. Ct. 395, 80 L. Ed. 522. The records of the domestic relations courts throughout the Nation are replete with instances where, when domestic difficulty arises, parents, because of affection for their chil-

dren, inveigle or spirit them away. In absence of the exception, such person might suffer the condemnation of the statute if interstate commerce were involved. It may be that Congress was primarily concerned with this class of cases when the exception was framed. [123 F. 2d 715, 716.]

In the case of *Gooch* v. *United States*, 297 U.S. 124 (1936), which is referred to in *Miller*, the Supreme Court in dictum said:

> The words "except, in case of a minor, by a parent thereof" emphasize the intended result of the enactment. They indicate legislative understanding that in their absence a parent, who carried his child away because of affection, might subject himself to condemnation of the statute. *Brown* v. *Maryland*, 12 Wheat. 419, 438. [Gooch at 129.]

The sound policy of Congress in providing for this exemption should, therefore, be maintained.

IV. Pro and Con Analysis of H.R. 8722

H.R. 8722 amends the Lindbergh Act to add new provision which reads, as follows:

> The failure of a person, who voluntarily agrees to travel with another to a particular destination, to arrive at that destination after a reasonable period of time from the commencement of such travel, shall create a rebuttable presumption that the person so voluntarily agreeing to travel has been decoyed or inveigled under subsec. (a)

Subsec. (a) of sec. 1201 reads, as follows:

> Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parents thereof, when:
>
> (1) the person is willfully transported in interstate or foreign commerce;
>
> (2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
>
> (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101 (32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)); or
>
> (4) the person is a foreign official as defined in section 1116(b) or an official guest as defined in section 1116(c) (4) of this title,
>
> shall be punished by imprisonment for any term of years or for life.

Arguments in favor of H.R. 8722

The 1934 Amendment to the Lindbergh Act created a non-conclusive presumption that within seven days after a person had been kidnaped, he had been transported in interstate or foreign commerce. The legislative history of the 1934 Amendment makes it clear that the principal purpose of the presumption was not evidentiary but investigative, that is to permit the Federal Bureau of Investigation to enter the investigation of any kidnaping case after seven days. See Part I, Legislative History of Lindbergh Act, pp. 9–12 on the 1934 Amendment. The legislative history of the 1956 Amendment, which reduced the time period from seven days to twenty-four hours shows a similar purpose. See Part I, Legislative History of Lindbergh Act, pp. 19–21 on the 1956 Amendment.

H.R. 8722, in creating a presumption that a person who has voluntarily agreed to travel with another to a particular destination but who fails to arrive at that destination after a reasonable period of time from the commencement of the travel has been decoyed or inveigled, would likewise facilitate the intervention of the FBI. Under the present presumption, it is from the fact of a decoying or inveiglement, that interstate or foreign transport is presumed. Under the proposed bill, the decoying or inveiglement may itself be presumed. Such a presumption will permit the FBI to enter cases such as the well-known Karen Levy case where a college girl accepted a ride from New York to New Jersey with a traveling businessman but failed to arrive at her destination. See letter from Mr. and Mrs. Bertram Levy, *Washington Post*, Feb. 14, 1974, p A 23.

Arguments against H.R. 8722

As an initial matter, H.R. 8722 is ambiguous in its drafting. The facts to be proved in the presumption are (1) voluntary agreement to travel to a particular destination and (2) failure to arrive at that destination after a reasonable

period of time from the commencement of such travel. No mention is made of the actual commencement of travel as a fact to be proved but the second phrase implies that such travel must, in fact, have occurred. Moreover, it is not clear what facts are being presumed. The reference to being "decoyed or inveigled under subsec. (a)" apparently means that only the facts of decoying or inveiglement are presumed rather than the other facts in subsec. (a) as well, e.g. willful transport in interstate or foreign commerce, but the matter is unclear. Finally, the relation between the existing presumption and the new one is unclear, though apparently it would be possible to build a presumption on a presumption, that is, under the new presumption the fact of inveiglement or decoying may be presumed and from this presumed fact it may, under the existing provision, be further presumed that transport in interstate or foreign commerce has occurred.

However, the principal vice of H.R. 8722 is its unconstitutionality. In the case of *Leary* v. *United States*, 395 U.S. 6 (1969), the Supreme Court noted that in the previous cases of *Tot* v. *United States*, 319 U.S. 463 (1943), *United States* v. *Gainey*, 380 U.S. 63 (1965), and *United States* v. *Romano*, 382 U.S. 136 (1965) the controlling test for determining the validity of a statutory presumption was whether there was a rational connection between the facts proved and the facts presumed. With respect to this "rational connection test, the Court in *Leary* said:

> The upshot of *Tot*, *Gainey*, and *Romano* is, we think, that a criminal statutory presumption must be regarded as "irrational" or "arbitrary," and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. And in the judicial assessment the congressional determination favoring the particular presumption must, of course, weigh heavily. [*Leary* at 36.]

Surely it cannot be said with substantial assurance that the presumed fact of decoying or inveiglement is more likely than not to flow from the proved facts of a voluntary agreement to travel to a particular destination with another and the failure to arrive at that destination after a reasonable period of time from the commencement of such travel.

Finally, it is not at all clear that the FBI lacks the authority under existing law to investigate cases of the Levy type. The offense described in 18 U.S.C. sec. 1201 is very broad and is not merely restricted to kidnaping. Furthermore, the FBI has very broad general authority to conduct criminal investigations. 28 U.S.C. sec. 533. In this regard, Department of Justice regulations provide as follows:

> Subject to the general supervision and direction of the Attorney General, the Director of the Federal Bureau of Investigation shall:
>
> (a) Investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. [28 C.F.R. sec. 0.85.]

While the FBI has broad authority to conduct criminal investigations, it also has wide discretion in the initiation and conduct of such investigations. The refusal of the FBI to investigate cases of the Levy type would appear to result not from a lack of authority but from an exercise of administrative discretion. The proposed bill would not, of course, affect the exercise of such discretion. The FBI would not be required to investigate cases of the Levy type.

RICHARD E. ISRAEL,
Legislative Attorney.

Mr. CONYERS. Without any further ado, we welcome Congressman Forsythe. We have your very detailed statement, which will be incorporated into the record at this point, and we invite you to proceed as you will. [See statement at p. 49.]

I should recognize your legislative assistant, Mr. George Mannina, who is sitting at your right.

TESTIMONY OF HON. EDWIN B. FORSYTHE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, ACCOMPANIED BY GEORGE MANNINA, LEGISLATIVE ASSISTANT; AND MR. AND MRS. BERTRAM LEVY, CHERRY HILL, N.J.

Mr. FORSYTHE. Thank you very much, Mr. Chairman.

I certainly want to commend the committee for the opportunity to present this testimony on H.R. 8722. As you have said, Mr. and Mrs. Bertram Levy are with me and, of course, this legislation deals with their daughter, who was abducted on November 10, 1972.

With your permission, I would like to read this testimony, because I do think it is important and I know that sometimes you cannot review it all; I only summarize it.

It was the tragic history of Karen Levy that caused me to introduce legislation to clarify the FBI's investigatory authority in cases where someone voluntarily accepts transportation to a point across State lines and fails to arrive within a reasonable time. This legislation creates an investigative presumption similar to the one created by Congress in 1934. In the 2 years preceding that date, the FBI had found itself unable to intervene in numerous kidnaping cases because there was no clear proof that the victims had been transported across State lines. To overcome this deficiency, the Congress amended the 1932 kidnaping statute to state that if a kidnaping victim had not been released within 7 days, it was presumed that he or she had been carried across State lines and thus the FBI could enter the case. In 1956, the time was changed from 7 days to 24 hours. I believe the legislation I have introduced is a logical extension of what I shall call the 24-hour presumption.

Before discussing some of the issues surrounding the implementation of H.R. 8722, I would like to review with the committee the need for this bill, using Karen Levy's case as an example of the need.

In the days preceding November 10, 1972, Karen, who was a student at Syracuse University, made plans to visit her boyfriend, a student at Monmouth College in West Long Branch, N.J. Since Karen did not own a car she placed notices on various bulletin boards on campus advertising for a ride. A man who identified himself as "Bill Lacey" responded to Karen's notices, offering her a ride. The man's manner and conversation aroused doubts in Karen's mind about whether to accept the proffered ride. Thus, she took care to advise her friends and boyfriend as to the approximate time she would be arriving in West Long Branch. She also asked a girl friend, Paula Lippin, and Paula's boyfriend, Mitchell Sakofs, to accompany her to the Upstate Medical Center where "Bill Lacey" had asked Karen to meet him. The agreement between the trio was that Karen would accept the ride only if "Bill Lacey" "seemed OK." At the Upstate Medical Center, Karen and her two friends were met by a young man neatly dressed in a business suit who identified himself as "Bill Lacey." After a brief conversation, Karen decided to accept the ride and at 6 p.m. on Friday, November 10, 1972, she waved goodbye to her friends. That was the last time anyone has seen Karen Levy.

At this point I remind the committee that it was the Congress determination in 1932 that local authorities generally did not have the resources to effectively handle kidnaping cases, which resulted in the enactment of statutes giving the FBI authority to intervene in kidnaping investigations. In the instant case, the FBI took the position that because Karen had voluntarily accepted a ride and because there was no evidence of foul play or that State lines were crossed, the Bureau could not enter the case. Thus, the Syracuse University Police Department and the Syracuse, N.Y. police handled the investigation in those first crucial days, and I believe the history of those days will again establish the validity of Congress 1932 findings.

The Syracuse University Police Department's initial report listed the only person who accompanied Karen to meet "Bill Lacey" on November 10, as Amy Krackovitz, Karen's roommate. However, two people, not one, accompanied Karen, and Amy Krackovitz was not one of them. Similarly, the report listed the suspected abductor as one "Charles Lacey," and the university police has devoted some time and effort in preparing a preliminary background report on a "Charles Lacey" for their initial report. However, Karen Levy's abductor had identified himself as "Bill Lacey" not "Charles," and again precious time was lost. In fact, it was not until 2 days after Karen's disappearance that the Syracuse University Police Department mapped a coordinated plan of investigation. Yet, even after mapping the plan, it was not until the afternoon of November 13, when at the suggestion of the Levys' private detective that the Syracuse University Police Department went to the rideboards to check for fingerprints on Karen's ride notices, which were the tab type requiring anyone removing a tab with Karen's phone number on it to touch the notice.

Similarly, the reactions of the Syracuse, N.Y. Police Department were slow. While interviewing people acquainted with Karen and her case, in an effort to search out information, the Levys' private detective discovered that the Syracuse Police Department had not yet questioned several of these witnesses. The astonishing fact is that almost 3 days after Karen had disappeared, no one had questioned one of the people who had been with her the night Karen met "Bill Lacey." Further, Karen's ride notices, which had finally been retrieved by the Syracuse University Police force were not dusted for fingerprints by the city police department until November 17—7 days after Karen vanished.

Mr. Chairman, I would continue but I believe I have made my point—local police authorities often do not have the resources to approach these cases with the thoroughness that characterizes FBI investigations. Yet, the FBI would not enter this case because of a claimed lack of jurisdiction.

Resource limitation is not the only problem confronting local police departments in this regard. There are significant difficulties associated with coordinating a multijurisdictional search and local police departments may not be equipped to perform such a function. Furthermore, in many States, of which New York is but one example, the State police are prohibited from becoming involved in a case if there is an existing local authority. Thus, in the *Karen Levy* case, the Syracuse Police Department were stretching their thin resources to coordi-

nate an investigation that spread well beyond the boundaries of the city of Syracuse and State of New York. The Syracuse Police could have requested coordination assistance from the New York State Police, but even this larger police unit is prevented from carrying its investigation into other States. Imagine a kidnaping involving several States and municipal police forces in which each is pursuing various clues independent of the other in an uncoordinated vacuum. Here, Mr. Chairman, is where the umbrella authority and expertise of the FBI is vital.

To this point, I have dealt rather clinically with the history of the Karen Levy kidnaping. But kidnaping is not a clinical subject. It is a very personal one. No one can know the emotional and mental anguish that is kidnaping. Those of us who are parents can perhaps for a moment imagine it—but to live it for 15 months is a different thing.

Mr. and Mrs. Levy have prepared a short statement, the simplicity and eloquence of which can perhaps give us a glimpse of the mental anguish and suffering that is kidnaping. At this point I would like to ask the Levys to present their statement.

Mr. CONYERS. Of course. We are very pleased that they would show this kind of concern, and make themselves available for this hearing on the Federal kidnaping statute. We are very grateful that they are here. We welcome the Levys with understanding, and invite them both to proceed in their own way.

Mrs. LEVY. Mr. Chairman, my husband and I very much appreciate the opportunity to be here today. I have given up hope of ever seeing our daughter alive because I know that if she were alive, there would be no bounds strong enough to prevent her from getting in touch with us. My husband has not quite accepted this, and this I can understand. He still has hopes of seeing her alive.

We want to bury our daughter decently and with dignity. We don't want her lying in some hole or shallow grave. But more important than anything else, we want to end once and for all the cynicism and callousness which prevented prompt investigation when our daughter did not arrive at her destination on time. No one lifted a finger for days, and those days were crucial, because they could not believe the honesty and the sincerity and goodness of our child. That our child made a mistake in believing that this was a world of good will by putting a notice on the campus bulletin board, as did others, asking for a ride to New Jersey, is now clear. We are not even questioning the wisdom of the university authorities for permitting this type of activity. It is also unimportant that they no longer permit it.

What does upset us is that anybody could possibly think that she sought anything more than a ride to New Jersey. That anybody could read anything more into that still shocks us. That the authorities did not give our child the benefit of the doubt when she did not arrive on time so as to start an immediate investigation to find her and the person who took her away also shocks us.

This is the important issue because even though our daughter is dead, there will be other girls who will make the same mistake of thinking that this is a world of good will.

It is not possible for us to rest until we can bury our child. It is not possible for us to rest until we can bury that cynicism and callousness

which deprive our children of the benefit of the doubt so that a case of a missing child will never again be put on the back burner and the time that is invaluable will not slip through our fingers.

Mr. CONYERS. Thank you very much for that statement.

Mr. FORSYTHE. I would like to continue.

Mr. and Mrs. Levy are not alone in their anguish. In 1972, a student attending a college in North Carolina accepted a ride from the rideboard so that she could visit her father in Connecticut. Two months after she left Greensboro, N.C., her lifeless body was found in a river. The FBI was not involved in this case.

In August 1973, a 21-year-old resident of Haddon Heights, N.J., in a somewhat reverse case offered to drive two riders unknown to him to California. When he did not arrive the local police began a search and found his clothes, wallet, and other personal possessions in his unlocked car which had been driven to the side of a lonely road. The FBI has not interceded in this case and the local police have confined their efforts so far to putting out a missing persons report and searching the area. The young man has still not been found despite the strong circumstantial evidence of foul play.

In another case, a Berkeley Heights, N.J., high school student attending a private boarding school accepted a ride from an unknown driver. She never arrived home and again the FBI did not intercede in this case. But this was one case in which we at least know the end. The girl was found when someone spotted a dog walking along a highway carrying the girl's arm in its mouth.

No, the Karen Levy case is not unique. There are 3,348,644 students in 2,606 colleges who risk the same fate whenever they accept a ride from a rideboard. In fact, informal data gathered by the National Student Lobby suggests that on any given weekend, 40 percent of the college population is traveling to points more than 15 miles distant from their college, and 16 percent of that number travel with someone they do not know. Thus, on any given weekend, 534,313 students find themselves accepting rides from people they have never met.

How many of these students do not arrive is unknown to the FBI and unknown to State authorities. But I can assure you that it is not unknown to the parents. The comment of a New York City detective made during a telephone interview with a member of my staff is rather shocking. His comment was, "We have plenty of arrest records on the criminals, but no information on the victims. The victims become forgotten statistics." Forgotten by all but friends and relatives.

This morning, the FBI will probably express their appreciation for the high esteem in which I hold the competence of the Bureau and will most likely point out that if they had to investigate every runaway or missing persons case, their resources would be hard pressed since there are approximately 1 million runaway cases reported each year.

To that I have two responses. In the first place, H.R. 8722 does not require the FBI to investigate the 1 million runaway cases reported annually. H.R. 8722 only authorizes the FBI to investigate in cases where a person voluntarily accepts transportation to a destination across State lines and does not arrive in a reasonable period of time. This is a far different thing than 1 million runaway cases.

My second point is that the figure of 1 million runaways is grossly misleading. A study of 834 runaways in Prince Georges County, Md.,

conducted in 1962 by the National Institute of Mental Health, found that two-thirds of these runaways were home again within 48 hours. Half decided to return on their own, while the other half were either located by their friends or families, or returned through the help of the local police.

The police in Stillwater, Okla., home of Oklahoma State University, estimate that, based on their experiences, most missing persons reported to them are located within 36 hours.

Similarly, the Los Angeles Police Department estimates that 80 percent of their reported runaways return home within 24 hours. I quote these selected statistics because there is no national data on this subject, and I want to point out that within the 24-hour time limit in which the FBI is prohibited from entering most missing persons cases, the vast majority of these cases solve themselves.

It may also be stated that H.R. 8722 rests on questionable constitutional grounds. Some people have indeed argued that the bill creates a presumption that a kidnaping has occurred, thus shifting the burden of proof to the defendant and creating a situation of guilty until proven innocent.

I do not believe this contention withstands careful analysis. In the first instance, H.R. 8722 does not seek to create an evidentiary presumption that kidnaping has occurred. H.R. 8722 seeks only to create a rebuttable presumption of inveiglement or decoying for the purposes of investigation only.

Just as the legislative history of the 24-hour presumption makes it clear that the principal purpose of the presumption was investigatory not evidentiary, so, too, it should be made clear that H.R. 8722 is for investigatory purposes only.

In the second place, as a practical matter, it is somewhat unlikely that a prosecuting attorney, in the *Karen Levy* case, for example, would rest his case on the argument that a person charged with kidnaping is guilty solely because it is presumed the victim was decoyed and was last seen with the accused. I rather suspect that any prosecuting attorney who expects the jury to return a verdict of guilty will base his case on the facts rather than investigatory presumptions.

Nevertheless, to clarify this point, I would recommend that a new section be added to H.R. 8722. The purpose of the section is to state that the presumption created by this legislation is exclusively for investigatory purpose and in no way represents evidentiary assumption.

Those searching for a constitutional basis on which to oppose this bill also contend that the controlling test for determining the validity of a statutory presumption is whether there is a reasonable connection between the facts proved and the facts presumed. The court in *Leary* v. *United States*, 365 U.S. 6 (1969), stated,

> A criminal statutory presumption must be regarded as irrational or arbitrary and hence unconstitutional, unless it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. And in the judicial assessment the congressional determination favoring the particular assumption must, of course, weigh heavily.

Opponents of H.R. 8722 then contend that it cannot be said with substantial assurance that the presumed fact of decoying or inveiglement is more likely than not to have occurred when a person volun-

tarily agrees to travel to a particular destination and fails to arrive after a reasonable period after the commencement of travel.

I believe if someone makes plans to travel to a certain place, advising the people in that place when he or she is to arrive, accepts transportation from a stranger in order to get there, and fails to arrive in a reasonable period, it is not an unreasonable presumption to suspect foul play may have occurred.

Further, as a practical matter, it is extremely unlikely that the legislation will ever be challenged on constitutional grounds because, by the time the case goes to trial, the facts will have been established and the validity of the presumption will have been established simultaneously.

However, let us assume for a moment that this constitutional challenge is leveled at H.R. 8722. If the court test cited above is applicable to the presumption created by H.R. 8722, then it must also be applicable to the present 24-hour presumption. In both cases, the constitutionality would rise or fall on whether there is a rational connection between the presumed fact and the proven fact.

I cannot offer any concrete data to prove that based on past experience, the presumption of H.R. 8722 is valid, for that data does not exist. However, it must be noted in this regard that the Supreme Court has stated "* * * the congressional course weighs heavily," in determining the constitutionality of the presumption.

It has been argued that notwithstanding any congressional determination, if there are no facts to support an otherwise unconstitutional presumption, the courts could find the presumption invalid. Thus, it is concluded that H.R. 8722 will be found unconstitutional because there are no developed concrete facts to support its presumption.

At this time, I would like to point out if that logic is followed, and if H.R. 8722 is unconstitutional on these grounds, then so, too, is the cornerstone of the FBI's investigatory authority unconstitutional. I refer to the 24-hour presumption on which the FBI bases its investigatory authority in a vast number of cases. I say this because the FBI has absolutely no knowledge of how many kidnaping cases it investigates which involve the interstate transportation of the victim. There is no proof available to establish that there is a reasonable connection between the facts presumed and the facts proved.

Having gone through this analysis to establish that the same assumptions underpinning the validity of the present 24-hour presumption also underpin the validity of the presumptions of H.R. 8722, I again point out that it is extremely unlikely, as a practical matter, that in an individual case such a challenge would be raised since by the time the case was brought to trial, the facts would have been established.

It is my view, as it is the view of many legal scholars, that the FBI did and does have the authority to intervene in the *Levy* case. The law as presently written does not require proof that interstate lines have been crossed prior to Federal intervention. Present law creates a 24-hour presumption. The refusal of the FBI to investigate cases of the *Levy* type would appear to result not from a lack of authority but from an exercise of administrative discretion. However,

if the Justice Department contents that it does not have the necessary authority, I believe the Congress should make its intent clear.

Finally, in my view, the present case raises serious questions about the manner in which the FBI interprets its duties under the law. I strongly recommend that your subcommittee exercise an increasingly watchful eye over the manner in which the FBI construes its authority to insure that these definitions are consistent with the objectives of the Congress.

Just two more comments, Mr. Chairman. We have with us a petition signed by 2,450 students of the Syracuse University, supporting this measure. We would like to leave that with the committee.

We also have with us the complete report of the private detective retained by Mr. and Mrs. Levy, and at the committee's discretion, I think that may be part of this report that might be well to include in your record. In cooperation with your staff, we would be willing to present that for inclusion of specific parts.

Mr. CONYERS. We will certainly consider these documents, and those that would be helpful for the permanent record will be included in the printed proceedings of this legislative hearing.

I think we are in debt to you for your exhaustive research and your presentation of a very important subject before us today. I think you have covered most of the questions on the minds of members of this subcommittee, and I would only ask further that any legal memoranda supporting the proposition that the Federal Bureau of Investigation currently has, within its jurisdiction, the authority to enter these kinds of cases, be submitted to the subcommittee for its consideration for inclusion in the record.

Mr. FORSYTHE. We will happily supply it.

[The information referred to follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 13, 1974.

Hon. JOHN CONYERS, JR.,
Chairman, Subcommittee on Crime, House Judiciary Committee, Rayburn House Office Building, Washington, D.C.

DEAR JOHN: I would like to express my deep appreciation to you for conducting hearings on H.R. 8722. Having become involved with the Karen Levy case, I am convinced of the need for legislation such as this. The reply of the Justice Department officials to your question regarding whether the Department would be willing to take action administratively to remedy this jurisdictional question reinforces my belief that a legislative remedy of some nature is required.

During the hearings, you specifically requested that I furnish the subcommittee with any materials I had indicating that the FBI already has the authority to investigate in cases such as the Karen Levy case. Already in your possession is the report from Mr. Israel of the American Law Division, which takes this position. I am enclosing a similar report, which I requested in May of 1973, from Mr. Hutton of the American Law Division. For the subcommittee's files, I am also forwarding to you the petition I received from 2450 students at Syracuse University, which I alluded to in my testimony.

If there is any further assistance I can render to you or the subcommittee, please do not hesitate to call on me.

Again, many thanks for your leadership in this area and for your courtesy during the hearings.

Sincerely,

EDWIN B. FORSYTHE,
Member of Congress.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., May 2, 1973.

To: Hon. Edwin B. Forsythe
From: American Law Division.
Subject: Precedent for FBI Jurisdiction in Case Involving Kidnaping of Person Who is "Inveigled" or "Decoyed."
(Attention: Bob Gatty.)

This will refer to your request on behalf of your constituent, Mr. Bertram D. Levy of Cherry Hill, New Jersey, whose daughter had disappeared on November 10, 1972, after accepting an offer of a ride from Syracuse to Monmouth College in New Jersey to visit her boyfriend. The offer of a ride was allegedly received from a person previously not known by his daughter in response to an advertisement she had placed on a bulletin board. The alleged kidnaper claimed to have been making a delivery to a hospital, a claim which had later been found to be false.

According to the file you sent, despite pleas from your Office, Senators Case and Williams and from Governor Cahill's office, the FBI has refused to actively investigate Miss Levy's disappearance. Former White House Counsel Dean asserted in his letter of March 14, 1973, that "the facts developed to date fail to indicate that there has been a violation of the Federal Kidnaping Statute or any other Federal statute within the purview of the FBI" and that therefore, "the FBI is unable to actively investigate Miss Levy's disappearance." Assistant Attorney General Peterson's letter indicated that the basis for the Justice Department's refusal to enter the case was that their review indicated that "the circumstances surrounding the disappearance of Miss Levy reveals no indication, other than pure speculation, that she crossed a state line."

In accordance with your request, we have examined the reported cases analyzing the federal kidnaping law, 18 U.S.C. §§ 1201, 1202, in search of a similar case to your constituent's alleged case of the victim being abducted by duplicity rather than force with the intention to transport her across state lines. We have found only one case in which actual force was not used in the kidnaping, *Chatwin* v. *United States*, 326 U.S. 455 (1946), which is enclosed. The Supreme Court found that the federal government did not have jurisdiction to act in that case, which involved a "celestial marriage" of a fifteen year old child with her employer because, despite evidence that the child had the mental age of a seven year old and could not be legally married in her state of residence, her decision to travel with the defendant from Utah to Arizona was found to be voluntary in nature. The facts in that case would not appear to be applicable to the Levy case since the *Chatwin* case involved a situation in which the person transported across state lines apparently gave knowing consent to the trip. There does not appear to be such consent in your constituent's situation since she allegedly contracted only for a ride to a given destination and, since she did not arrive there, was probably transported elsewhere. The crime of kidnaping under federal law is defined to include transporting in interstate commerce of "any person who had been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away." Such an offense can be for ransom, reward or other purposes.

The facts of the case, as presented by your letter and our conversations, would appear to provide grounds for federal jurisdiction. The law does not require proof that interstate lines be crossed prior to federal intervention but creates a rebuttable presumption that a victim has been transported in interstate or foreign commerce if he has not been released within twenty-four hours after being unlawfully "seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away." (18 U.S.C. § 1201(b)). The presumption of interstate transport is rebuttable by the defendant and not the federal government. It is possible that the FBI may have additional evidence not communicated to your office or the victim's parents indicating that Miss Levy was not "decoyed" into taking the offer of a ride. Since the language of the statute appears to be broad enough to cover the present case, we do not feel suggestions for amendment you requested would be warranted at this time.

We are enclosing a copy of Rule 21 of the Rules of Appellate Procedure describing the manner in which an application for a writ of mandamus may be filed. As we mentioned in our conversation, the courts generally are reluctant to interfere with the discretion of administrative officers, and they will generally

defer to their discretion, reasoning that they have full knowledge of the facts and reasons surrounding particular decisions. Accordingly, the courts seldom issue such writs in these circumstances.

E. JEREMY HUTTON,
Legislative Attorney.

CHATWIN v. UNITED STATES

NO. 31 CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT*

Argued October 10, 1945.—Decided January 2, 1946

1. In a prosecution for violation of the Federal Kidnaping Act, the stipulated facts as to the circumstances in which a 15-year-old girl undertook and continued a "celestial" marriage relationship with a cultist, failed to establish that she had been "held" within the meaning of the words "held for ransom or reward or otherwise" as used in the Act, and therefore convictions of the petitioners under the Act cannot be sustained. P. 459.

(a) For aught that appears from the stipulated facts, the alleged victim was free to leave the petitioners when and if she desired; therefore there was no proof of unlawful restraint. P. 460.

(b) There was no proof that any of the petitioners willfully intended, by force, fear, or deception, to hold the alleged victim against her will. Petitioners' beliefs are not shown to involve unlawful restraint of celestial wives. P. 460.

(c) There was no competent or substantial proof that the girl was of such an age or mentality as necessarily precluded her from understanding the doctrine of celestial marriage and from exercising her own free will; therefore the consent of the parents or guardian is not a factor in the case. P. 461.

(d) In the absence of evidence of the method of testing the girl's mental age, and of proof as to the weight and significance to be attached to the particular mental age, the stipulated fact that, a year before the alleged inveiglement and detention, the girl was of the mental age of 7 cannot be said necessarily to have precluded her from judging the principles of celestial marriage and from acting in accordance with her beliefs in the matter. There must be competent proof beyond a reasonable doubt of a victim's mental incapacity in relation to the very acts in question before the consent of the victim's parents or guardian can become a factor. P. 462.

2. Involuntariness of the victim's seizure and detention is of the essence of the crime of kidnaping; and, if that essential element is absent, the act of participating in illicit relations or contributing to the delinquency of a minor or entering into a celestial marriage, followed by interstate transportation, does not violate the Federal Kidnaping Act. P. 464.

3. The purpose of the Federal Kidnaping Act was to outlaw interstate kidnapings rather than general transgressions of morality involving the crossing of state lines; and the broad language of the Act must be interpreted and applied in the light of that purpose. P. 464. 146 F. 2d 730, reversed.

CERTIORARI, 324 U.S. 835, to review the affirmance of convictions, 56 F. Supp. 890, of violations of the Federal Kidnaping Act.

Mr. Claude T. Barnes, with whom *Messrs. E. D. Hatch* and *O. A. Tangren* were on the brief, for petitioners.

Assistant Solicitor General Judson, with whom *Messrs. W. Marvin Smith, Robert S. Erdahl* and *Miss Beatrice Rosenberg* were on the brief, for the United States.

MR. JUSTICE MURPHY delivered the opinion of the Court.

The Federal Kidnaping Act[1] punishes any one who knowingly transports or aids in transporting in interstate or foreign commerce "any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof." The sole issue confronting us in these cases is whether the stipulated facts support the convic-

*Together with No. 32, *Zitting* v. *United States*, and No. 33, *Christensen* v. *United States*, also on certiorari to the Circuit Court of Appeals for the Tenth Circuit.

[1] 47 Stat. 326; 48 Stat. 781; 18 U.S.C. § 408a.

tions of the three petitioners under this Act, the indictment having charged that they unlawfully inveigled, decoyed and carried away a minor child of the age of 15, held her for a stated period, and transported her from Utah to Arizona with knowledge that she had been so inveigled and held. We are not called upon to determine or characterize the morality of their actions. Nor are we concerned here with their liability under any other statute, federal or state.

Petitioners are members of the Fundamentalist cult of the Mormon faith, a cult that sanctions plural or "celestial" marriages. In August, 1940, petitioner Chatwin, who was then a 68-year old widower, employed one Dorothy Wyler as a housekeeper in his home in Santaquin, Utah. This girl was nearly 15 years old at this time although the stipulation indicates that she had only a mental age of 7.[2] Her employment by Chatwin was approved by her parents. While residing at Chatwin's home, the girl was continually taught by Chatwin and one Lulu Cook, who also resided there, that plural marriage was essential to her salvation. Chatwin also told her that it was her grandmother's desire that he should take her in celestial marriage and that such a marriage was in conformity with the true principles of the original Mormon Church. As a result of these teachings, the girl was converted to the principle of celestial marriage and entered into a cult marriage with Chatwin on December 19, 1940. Thereafter she became pregnant, which fact was discovered by her parents on July 24, 1941. The parents then informed the juvenile authorities of the State of Utah of the situation and they took the girl into custody as a delinquent on August 4, 1941, making her a ward of the juvenile court.

On August 10, 1941, the girl accompanied a juvenile probation officer to a motion picture show at Provo, Utah. The officer left the girl at the show and returned later to call for her. The girl asked to be allowed to stay on for a short time and the officer consented. Thereafter, and prior to the second return of the officer, the girl "left the picture show and went out onto the street in Provo." There she met two married daughters of Chatwin who gave her sufficient money to go from Provo to Salt Lake City. Shortly after arriving there she was taken to the home of petitioners Zitting and Christensen. They, together with Chatwin, convinced her that she should abide, as they put it, "by the law of God rather than the law of man" and that she was perfectly justified in running away from the juvenile court in order to live with Chatwin. They further convinced her that she should go with them to Mexico to be married legally to Chatwin and then remain in hiding until she had reached her majority under Utah law. Thereafter, on October 6, 1941, the three petitioners transported the girl in Zitting's automobile from Salt Lake City to Juarez, Mexico, where she went through a civil marriage ceremony with Chatwin on October 14. She was then brought back to Utah and thence to Short Creek, Arizona. There she lived in hiding with Chatwin under assumed names until discovered by federal authorities over two years later, December 9, 1943. While in Short Creek she gave birth to two children by Chatwin. The transportation of the girl from Provo to Salt Lake City, thence to Juarez, Mexico, and finally to Short Creek was without the consent and against the wishes of her parents and without authority from the juvenile court officials.[3]

Having waived jury trials, the three petitioners were found guilty as charged and were given jail sentences. 56 F. Supp. 890. The court below affirmed the convictions. 146 F. 2d 730. We granted certiorari, 324 U.S. 835, because of our doubts as to the correctness of the judgment that the petitioners were guilty under the Federal Kidnaping Act on the basis of the foregoing facts.

The Act by its own terms contemplates that the kidnaped victim shall have been (1) "unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever" and (2) "held for ransom or reward or otherwise." The Government contends that both elements appear from the stiulated facts in this case. The petitioners, it is argued, unlawfully "inveigled" or "decoyed" the girl away from the custody of her parents and the juvenile court authorities, the girl being "incapable of understanding the full significance

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[2] At the time of her employment by Chatwin, the girl's physical age was 14 years and 8 months; her mental age was 7 years and 2 months; her intelligence quotient was 67. At the time of the stipulation in March, 1944, she was a "high grade moron" with a mental age of 9 years and 8 months and an intelligence quotient of 64.

[3] In *Chatwin* v. *Terry*, 107 Utah 340, 153 P. 2d 941 (1944), the Utah Supreme Court held that the juvenile court had authority to hold the girl in custody until she reached the age of 21, despite her legal marriage to Chatwin.

of petitioners' importunities" because of her tender years and extremely low mentality. It is claimed, moreover, that the girl was "held" during the two-month period from August 10 to October 6, 1941, prior to the legal marriage, for the purpose of enabling Chatwin to cohabit with her and that this purpose, being of "benefit to the transgressor," is within the statutory term "or otherwise" as defined in *Gooch* v. *United States*, 297 U.S. 124, 128.

We are unable to approve the Government's contention. The agreed statement that the girl "left the picture show and went out onto the street in Provo" without any apparent motivating actions by the petitioners casts serious doubts on the claim that they "inveigled" or "decoyed" her away from the custody of the juvenile court authorities. But we do not pause to pursue this matter for it is obvious that there has been a complete lack of competent proof that the girl was "held for ransom or reward or otherwise" as that term is used in the Federal Kidnaping Act.

The act of holding a kidnaped person for a proscribed purpose necessarily implies an unlawful physical or mental restraint for an appreciable period against the person's will and with a willful intent so to confine the victim. If the victim is of such an age or mental state as to be incapable of having a recognizable will, the confinement then must be against the will of the parents or legal guardian of the victim. In this instance, however, the stipulated facts fail to reveal the presence of any of these essential elements.

(1) There is no proof that Chatwin or any of the other petitioners imposed at any time an unlawful physical or mental restrain upon the movements of the girl. Nothing indicates that she was deprived of her liberty, compelled to remain where she did not wish to remain, or compelled to go where she did not wish to go. For aught that appears from the stipulation, she was perfectly free to leave the petitioners when and if she so desired. In other words, the Government has failed to prove an act of unlawful restraint.

(2) There is no proof that Chatwin or any of the other petitioners willfully intended through force, fear or deception to confine the girl against her desires. While bona fide religious beliefs cannot absolve one from liability under the Federal Kidnaping Act, petitioners' beliefs are not shown to necessitate unlawful restraints of celestial wives against their wills. Nor does the fact that Chatwin intended to cohabit with the girl and to live with her as husband and wife serve as a substitute for an intent to restrain her movements contrary to her wishes, as required by the Act.

(3) Finally, there is no competent or substantial proof that the girl was of such an age or mentality as necessarily to preclude her from understanding the doctrine of celestial marriage and from exercising her own free will, thereby making the will of her parents or the juvenile court authorities the important factor. At the time of the alleged inveiglement in August 1941, she was 15 years and 8 months of age and the alleged holding occurred thereafter. There is no legal warrant for concluding that such an age is ispso facto proof of mental incapacity in view of the general rule that incapacity is to be presumed only where a child is under the age of 14. 9 Wigmore on Evidence (3rd ed.) § 2514.[4] Nor is there any statutory warrant in this instance for holding that the consent of a child of this age is immaterial. Cf. *In re Morrissey*, 137 U.S. 157; *United States* v. *Williams*, 302 U.S. 46; *State* v. *Rhoades*, 29 Wash. 61, 69 P. 389. In Utah, parenthetically, any alleged victim over the age of 12 is considered sufficiently competent so that his consent may be used by an alleged kidnaper in defense to a charge under the state kidnaping statute. Utah Code Ann. (1943) § 103-33-2. And a person over the age of 14 in Utah is stated to be capable of committing a crime, the presumption of incapacity applying only to those younger. § 103-1-40. *Sadleir* v. *Young*, 97 Utah 291, 85 P. 2d 810; *State* v. *Terrell*, 55 Utah 314, 186 P. 108.

Great stress is placed by the Government, however, upon the admitted fact that the girl possessed a mental age of 7 in 1940, one year before the alleged inveiglement and holding. It is unnecessary here to determine the validity, the reliability or the proper use of mental tests, particularly in relation to criminal

[4] See *Commonwealth* v. *Nickerson*, 87 Mass. 518 (child of 9 held incompetent to assent to forcible transfer of custody); *State* v. *Farrar*, 41 N.H. 53 (child of 4 held incapable of consenting to forcible seizure and abduction); *Herring* v. *Boyle*, 1 C.M.&R. 377 (child of 10 could not recover for false imprisonment without proof that he knew of alleged restraint upon him); *In re Lloyd*, 3 Man. & Gr. 547 (child between 11 and 12 held competent to decide whether to live with father or mother).

trials. It suffices to note that the method of testing the girl's mental age is not revealed and that there is a complete absence of proof in the record as to the proper weight and significance to be attached to this particular mental age. Nothing appears save a bare mathematical approximation unrestricted in terms to the narrow legal issue in this case. Under such circumstances a stipulated mental age of 7 cannot be said necessarily to preclude one from understanding and judging the principles of celestial marriage and from acting in accordance with one's beliefs in the matter. The serious crime of kidnaping should turn on something more substantial than such an unexplained mathematical approximation of the victim's mental age. There must be competent proof beyond a reasonable doubt of a victim's mental incapacity in relation to the very acts in question before criminal liability can be sanctioned in a case of this nature.[5]

The stipulated facts of this case reveal a situation quite different from the general problem to which the framers of the Federal Kidnaping Act addressed themselves. This statute was drawn in 1932 against a background of organized violence. 75 Cong. Rec. 13282–13304. Kidnaping by that time had become an epidemic in the United States. Ruthless criminal bands utilized every known legal and scientific means to achieve their aims and to protect themselves. Victims were selected from among the wealthy with great care and study. Details of the seizures and detentions were fully and meticulously worked out in advance. Ransom was the usual motive. "Law enforcement authorities, lacking coordination, with no uniform system of intercommunication and restricted in authority to activities in their own jurisdiction, found themselves laughed at by criminals bound by no such inhibitions or restrictions . . . The procedure was simple—a man would be kidnapped in one State and whisked into another, and still another, his captors knowing full well that the police in the jurisdiction where the crime was committed had no authority as far as the State of confinement and concealment was concerned." Fisher and McGuire, "Kidnapping and the So-called Lindbergh Law," 12 New York U. L. Q. Rev. 646, 653. See also Hearing before the House Committee on the Judiciary (72d Cong., 1st Sess.) on H.R. 5657, Serial 4; Finley, "The Lindbergh Law," 28 Georgetown L. J. 908.

It was to assist the states in stamping out this growing and sinister menace of kidnaping that the Federal Kidnaping Act was designed. Its proponents recognized that where victims were transported across state lines only the federal government had the power to disregard such barriers in pursuing the captors. H. Rep. No. 1493 (72d Cong., 1st Sess.); S. Rep. 765 (72d Cong., 1st Sess.). Given added impetus by the emotion which gripped the nation due to the famous Lindbergh kidnaping case, the federal statute was speedily adopted. See 75 Cong. Rec. 5075–5076, 13282–13304. Comprehensive language was used to cover every possible variety of kidnaping followed by interstate transportation. Armed with this legislative mandate, federal officials have achieved a high and effective control of this type of crime.

But the broadness of the statutory language does not permit us to tear the words out of their context, using the magic of lexigraphy to apply them to unattractive or immoral situations lacking the involuntariness of seizure and detention which is the very essence of the crime of kidnaping. Thus, if this essential element is missing, the act of participating in illicit relations or contributing to the delinquency of a minor or entering into a celestial marriage, followed by interstate transportation, does not constitute a crime under the Federal Kidnaping Act. No unusual or notorious situation relating to the inability of state authorities to capture and punish participants in such activities evidenced itself at the time this Act was created; no authoritative spokesman indicated that the Act was to be used to assist the states in these matters, however unlawful and obnoxious the character of these activities might otherwise be. Nor is there any indication that Congress desired or contemplated that the punishment of death or long imprisonment, as authorized by the Act, might be applied to those guilty of immoralities lacking the characteristics of true kidnapings. In short, the purpose of the Act was to outlaw interstate kidnapings rather than general transgressions of morality involving the crossing of state lines. And the broad language of the statute must be interpreted and applied with that plain fact in mind. See *United States* v. *American Trucking Associations*, 310 U.S. 534, 543–544.

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[5] See *State* v. *Kelsie*, 93 Vt. 450, 108 A. 391; *State* v. *Schilling*, 95 N.J.L. 145, 112 A. 400; *People* v. *Oxnam*, 170 Cal. 211, 149 P. 165; *State* v. *Schafer*, 156 Wash. 240, 286 P. 833; *Commonwealth* v. *Stewart*, 255 Mass. 9, 151 N.E. 74; *Commonwealth* v. *Trippi*, 268 Mass. 227, 167 N.E. 354; Woodbridge, "Physical and Mental Infancy in the Criminal Law," 87 U. of Pa. L. Rev. 426.

Were we to sanction a careless concept of the crime of kidnaping or were we to disregard the background and setting of the Act the boundaries of potential liability would be lost in infinity. A loose construction of the statutory language conceivably could lead to the punishment of anyone who induced another to leave his surroundings and do some innocent or illegal act of benefit to the former, state lines subsequently being traversed. The absurdity of such a result, with its attendant likelihood of unfair punishment and blackmail, is sufficient by itself to foreclose that construction.

The judgment of the court below affirming the convictions of the petitioners must therefore

Reversed.

MR. JUSTICE BURTON concurs in the result.

MR. JUSTICE JACKSON took no part in the consideration or decision of these cases.

Mr. CONYERS. I would like to recognize, again, the gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman, and thank you, Congressman, and Mrs. Levy.

I was happy to see you address yourself to the question of the constitutionality of this proposed legislation because you have anticipated the testimony that will be forthcoming. Just let me read the position that will be advocated before this committee by the following witness, where it is pointed out:

It should be noted that if H.R. 8722 were enacted it would create a presumption of kidnaping; whereas, the present statute merely provides that the failure to release the victim of a kidnaping within 24 hours creates a rebuttable presumption that the victim has been transported in interstate commerce. The 24 hour presumption merely presumes that there is federal jurisdiction where the crime of kidnaping has clearly been committed; the presumption which would be created by H.R. 8722 is that a crime has in fact been committed.

I would take some issue with the statement, as I am sure you would. To my knowledge, there is no Federal statute that will be violated in the absence of interstate travel. In other words, kidnaping itself would be a State crime and there is no Federal crime unless there is interstate travel. And to the extent we create a rebuttal presumption of interstate travel, it seems to me we have, in fact, established a Federal criminal act as such.

I particularly appreciate that the thrust of your amendment is to give the FBI jurisdiction to investigate rather than to establish the substance of a crime itself. But I am sure this argument will be made subsequently and, again, I am happy that you addressed yourself to it.

More importantly, I think what struck a chord with me is your pointing up that perhaps the Federal Government had jurisdiction to intervene in this case in any event under existing authority. I tend to subscribe to that particular view. Objections that will be raised, or have been raised, were on the basis of, first, there was no evidence that Karen had been abducted or taken against her will, and, second, there was no evidence of any interstate transportation.

But it seems to me from what I have been able to read about the case—and again I do not want to prejudge the testimony coming—but there was certainly circumstantial evidence that Karen Levy could have been evaluated by the evidence to determine whether there was any inclination that she was leaving home, such as a missing person or runaway. From the available facts that does not seem to be the case here. Moreover it seems clear that her destination was interstate be-

cause she was seeking to cross lines. And so certainly the circumstantial evidence would have been sufficient to allow the FBI to use its discretion to enter this case.

It seems to me that sometimes we seem to substitute a rule of thumb for a rule of reason, which seems to be the case here. There is a tendency to embrace our forms and regulations rather than pursue our mission of providing service to the people of this country. Unfortunately, flexibility of discretion, when it goes unused or is abused, invites the rigidity of legislation. And that is something I would like to avoid, if possible, but it is something which you have brought to a head and I just want to thank you for your testimony in that regard.

I do not believe I have any further questions.

Mr. CONYERS. Mr. Fish, the gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

I, too, want to commend you, Congressman Forsythe and Mrs. Levy. I won't prolong our hard deliberations this morning, except to say this member of this committee is extremely sympathetic with the issue you brought before us, and I see no legal or constitutional problems inherent in this legislation that we are not capable of working out to arrive at a just solution that I think, Mrs. Levy, you would approve of.

Thank you.

Mr. CONYERS. Mr. Froehlich of Wisconsin.

Mr. FROEHLICH. No questions, Mr. Chairman.

Mr. CONYERS. Mr. Maraziti of New Jersey.

Mr. MARAZITI. Thank you, Mr. Chairman.

Mr. Forsythe, I would like to compliment you and Mrs. Levy for a very thorough handling of this matter and a very thorough presentation. And I agree with Mr. Fish, I do not see any constitutional problems here.

You have pointed out that this presumption is an investigatory presumption, not an evidentiary presumption. I think any problems here can be worked out. The main point, as I understand it, is that in cases of this type, we must make it clear that the FBI does have jurisdiction because, apparently, as you pointed out, other police authorities do not have the will or most likely the capability to properly handle or cope with the situation.

I concur with your suggested amendments, and am very pleased to support you.

Mr. CONYERS. Thank you all, especially Mr. and Mrs. Levy. There is no point in us trying to express to you the kind of courage and the steadfastness we think you have shown in this matter, in thinking not only about your daughter, but about those hundreds, and maybe thousands, of other parents who have faced and will prospectively face the same kind of tragedy.

We will keep your sentiment and your statement in mind. We thank your Congressman and his staff for focusing this subcommittee's attention on this question.

Thank you very, very much.

Mr. FORSYTHE. Thank you, Mr. Chairman. Thank you, Members.

[The prepared statement of Hon. Edwin B. Forsythe follows:]

STATEMENT OF HON. EDWIN B. FORSYTHE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I would like to take this opportunity to commend you for holding hearings on H.R. 8722. With me today are Mr. and Mrs. Bertram Levy whose daughter Karen was abducted on November 10, 1972. It was the tragic history of Karen Levy that caused me to introduce legislation to clarify the FBI's investigatory authority in cases where someone voluntarily accepts transportation to a point across state lines and fails to arrive within a reasonable time. This legislation creates an investigative presumption similar to the one created by Congress in 1934. In the two years preceding that date, the FBI had found itself unable to intervene in numerous kidnaping cases because there was no clear proof that the victims had been transported across state lines. To overcome this deficiency, the Congress amended the 1932 kidnaping statute to state that if a kidnaping victim had not been released within seven days, it was presumed that he or she had been carried across state lines and thus the FBI could enter the case. In 1956, the time was changed from seven days to 24 hours. I believe the legislation I have introduced is a logical extension of what I shall call the 24 hour presumption.

Before discussing some of the issues surrounding the implementation of H.R. 8722, I would like to review with the Committee the need for this bill, using Karen Levy's case as an example of the need.

In the days preceding November 10, 1972, Karen who was a student at Syracuse University, made plans to visit her boyfriend, a student at Monmouth College in West Long Branch, New Jersey. Since Karen did not own a car she placed notices on various bulletin boards on campus advertising for a ride. A man who identified himself as "Bill Lacey" responded to Karen's notices, offering her a ride. The man's manner and conversation aroused doubts in Karen's mind about whether to accept the proffered ride. Thus, she took care to advise her friends and boyfriend as to the approximate time she would be arriving in West Long Branch. She also asked a girl friend, Paula Lippin, and Paula's boyfriend, Mitchell Sakofs, to accompany her to the Upstate Medical center where "Bill Lacey" had asked Karen to meet him. The agreement between the trio was that Karen would accept the ride only if "Bill Lacey" "seemed OK". At the Upstate Medical Center, Karen and her two friends were met by a young man neatly dressed in a business suit who identified himself as "Bill Lacey". After a brief conversation, Karen decided to accept the ride and at 6:00 p.m. on Friday, November 10, 1972 she waved goodbye to her friends. That was the last time anyone has seen Karen Levy.

At this point I remind the Committee that it was the Congress' determination in 1934 that local authorities generally did not have the resources to effectively handle kidnaping cases, which resulted in the enactment of statutes giving the FBI authority to intervene in kidnaping investigations. In the instant case, the FBI took the position that because Karen had voluntarily accepted a ride and because there was no evidence of foul play or that state lines were crossed, the Bureau could not enter the case. Thus, the Syracuse University Police Department and the Syracuse, New York, Police handled the investigation in those first crucial days, and I believe the history of those days will again establish the validity of Congress' 1934 findings.

The Syracuse University Police Department's initial report listed the only person who accompanied Karen to meet "Bill Lacey" on November 10, as Amy Krackovitz, Karen's roommate. However, two people, not one, accompanied Karen, and Amy Krackovitz was not one of them. Similarly, the report listed the suspected abductor as one "Charles Lacey", and the University Police has devoted some time and effort in preparing a preliminary background report on a "Charles Lacey" for their initial report. However, Karen Levy's abductor had identified himself as "Bill Lacey" not "Charles", and again precious time was lost. In fact, it was not until two days after Karen's disappearance that the Syracuse University Police Department mapped a coordinated plan of investigation. Yet, even after mapping the plan, it was not until the afternoon of November 13, when at the suggestion of the Levys' private detective that the Syracuse University Police Department went to the rideboards to check for fingerprints on Karen's ride notices, which were the tab type requiring anyone removing a tab with Karen's phone number on it to touch the notice.

Similarly, the reactions of the Syracuse, New York, Police Department were slow. While interviewing people acquainted with Karen and her case, in an effort to search out information, the Levys' private detective discovered that the Syracuse Police Department had not yet questioned several of these witnesses. The astonishing fact is that almost three days after Karen had disappeared, no one had questioned one of the people who had been with her the night Karen met "Bill Lacey." Further, Karen's ride notices, which had finally been retrieved by the Syracuse University Police force were not dusted for fingerprints by the city police department until November 17—seven days after Karen vanished.

Mr. Chairman, I would continue but I believe I have made my point—local police authorities often do not have the resources to approach these cases with the thoroughness that characterizes FBI investigations. Yet, the FBI would not enter this case because of a claimed lack of jurisdiction.

Resource limitation is not the only problem confronting local police departments in this regard. There are significant difficulties associated with coordinating a multi-jurisdictional search and local police departments may not be equipped to perform such a function. Furthermore, in many states, of which New York is but one example, the state police are prohibited from becoming involved in a case if there is an existing local authority. Thus, in the Karen Levy case, the Syracuse Police Department were stretching their thin resources to coordinate an investigation that spread well beyond the boundaries of the City of Syracuse and State of New York. The Syracuse police could have requested coordination assistance from the New York State Police, but even this larger police unit is prevented from carrying its investigation into other states. Imagine a kidnaping involving several states and municipal police forces in which each is pursuing various clues independent of the other in an uncoordinated vacuum. Here, Mr. Chairman, is where the umbrella authority and expertise of the FBI is vital.

To this point, I have dealt rather clinically with the history of the Karen Levy kidnaping. But kidnaping is not a clinical subject. It is a very personal one. No one can know the emotional and mental anguish that is kidnaping. Those of us who are parents can perhaps for a moment imagine it—but to live it for fifteen months is a different thing.

Mr. and Mrs. Levy have prepared a short statement, the simplicity and eloquence of which can perhaps give us a glimpse of the mental anguish and suffering that is kidnaping. At this point I would like to ask the Levys to present their statement.

"Mrs. LEVY. Mr. Chairman, my husband and I very much appreciate the opportunity to be here today. I have given up hope of ever seeing our daughter alive because I know that if she were alive, there would be no bounds strong enough to prevent her from getting in touch with us. That my husband has not quite accepted this, I can understand. He still has hopes of seeing her alive.

"We want to bury our daughter decently and with dignity. We don't want her lying in some hole or shallow grave. But more important than anything else, we want to end once and for all the cynicism and callousness which prevented prompt investigation when our daughter did not arrive at her destination on time. No one lifted a finger for days, and those days were crucial, because they could not believe the honesty and the sincerity and goodness of our child. That our child made a mistake in believing that this was a world of good will by putting a notice on the campus bulletin board, as did others, asking for a ride to New Jersey, is now clear. We are not even questioning the wisdom of the university authorities for permitting this type of activity. It is also unimportant that they no longer permit it.

"What does upset us is that anybody could possibly think that she sought anything more than a ride to New Jersey. That anybody could read anyhing more into that still shocks us. That the authorities did not give our child the benefit of the doubt when she did not arrive on time so as to start an immediate investigation to find her and the person who took her away also shocks us.

"This is the important issue because even though our daughter is dead, there will be other girls who will make the same mistake of thinking that this is a world of good will.

"It is not possible for us to rest until we can bury our child. It is not possible for us to rest until we can bury that cynicism and callousness which deprive our children of the benefit of the doubt so that a case of a missing child will never

again be put on the back burner and the time that is invaluable will not slip through our fingers."

Mr. Chairman, Mr. and Mrs. Levy are not alone in their anguish. In 1972, a student attending a college in North Carolina accepted a ride from the rideboard so that she could visit her father in Connecticut. Two months after she left Greensboro, North Carolina, her lifeless body was found in a river. The FBI was not involved in this case.

In August 1973, a 21-year-old resident of Haddon Heights, New Jersey, in a somewhat reverse case offered to drive two riders unknown to him to California. When he did not arrive the local police began a search and found his clothes, wallet, and other personal possessions in his unlocked car which had been driven to the side of a lonely road. The FBI has not interceded in this case and the local police have confined their efforts so far to putting out a missing persons report and searching the area. The young man has still not been found despite the strong circumstantial evidence of foul play.

In another case, a Berkeley Heights high school student attending a private boarding school accepted a ride from an unknown driver. She never arrived home and again, the FBI did not intercede in this case. But this was one case in which we at least know the end. The girl was found when someone spotted a dog walking along a highway carrying the girl's arm in its mouth.

No, the Karen Levy case is not unique. There are 8,348,644 students in 2,606 colleges who risk the same fate whenever they accept a ride from a rideboard. In fact, informal data gathered by the National Student Lobby suggests that on any given weekend, 40% of the college population is traveling to points more than 15 miles distant from their college and 16% of that number travel with someone they do not know. Thus, on any given weekend 534,313 students find themselves accepting rides from people they have never met.

How many of these students do not arrive is unknown to the FBI and unknown to state authorities. But I can assure you that it is not unknown to the parents. The comment of a New York City detective made during a telephone interview with a member of my staff is rather shocking. His comment was, "We have plenty of arrest records on the criminals, but no information on the victims. The victims become forgotten statistics." Forgotten by all but friends and relatives.

This morning, the FBI will probably express their appreciation for the high esteem in which I hold the competence of the Bureau and will most likely point out that if they had to investigate every runaway or missing persons case, their resources would be hard pressed since there are approximately one million runaway cases reported each year.

To that I have two responses. In the first place, H.R. 8722 does not require the FBI to investigate the one million runaway cases reported annually. H.R. 8722 only authorizes the FBI to investigate in cases where a person voluntarily accepts transportation to a destination across state lines and does not arrive in a reasonable period of time. This is a far different thing than one million runaway cases.

My second point is that the figure of one million runaways is grossly misleading. A study of 834 runaways in Prince Georges County, Maryland, conducted in 1962 by the National Institute of Mental Health found that two-thirds of these runaways were home again within 48 hours. Half decided to return on their own, while the other half were either located by their friends or families or returned through the help of the local police.

The police in Stillwater, Oklahoma, home of Oklahoma State University, estimate that, based on their experiences, most missing persons reported to them are located within 36 hours.

Similarly, the Los Angeles Police Department estimates that 80% of their reported runaways return home within 24 hours. I quote these selected statistics because there is no national data on this subject and I want to point out that within the 24 hour time limit in which the FBI is prohibited from entering most missing persons cases, the vast majority of these cases solve themselves.

It may also be stated that H.R. 8722 rests on questionable Constitutional grounds. Some people have indeed argued that the bill creates a presumption that a kidnapping has occurred, thus shifting the burden of proof to the defendant and creating a situation of guilty until proven innocent.

I do not believe this contention withstands careful analysis. In the first instance, H.R. 8722 does not seek to create an evidentiary presumption that kid-

napping has occurred. H.R. 8722 seeks only to create a rebuttable presumption of inveiglement or decoying for the purposes of investigation only.

Just as the legislative history of the 24 hour presumption makes it clear that the principal purpose of the presumption was investigatory, not evidentiary, so, too, it should be made clear that H.R. 8722 is for investigatory purposes only.

In the second place, as a practical matter, it is somewhat unlikely that a prosecuting attorney, in the Karen Levy case for example, would rest his case on the argument that a person charged with kidnapping is guilty solely because it is presumed the victim was decoyed and was last seen with the accused. I rather suspect that any prosecuting attorney who expects the jury to return a verdict of guilty will base his case on the facts rather than investigatory presumptions.

Nevertheless, to clarify this point, I would recommend that a new section be added to H.R. 8722. The purpose of the section is to state that the presumption created by this legislation is exclusively for investigatory purposes and in no way represents evidentiary assumption.

Those searching for a constitutional basis on which to oppose this bill also contend that the controlling test for determining the validity of a statuatory presumption is whether there is a reasonable connection between the facts proved and the facts presumed. The court in *Leary* v. *United States*, 365 U.S. 6 (1969), stated,

> "A criminal statutory presumption must be regarded as irrational or arbitrary and hence unconstitutional, unless it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. And in the judicial assessment the congressional determination favoring the particular assumption must, of course, weigh heavily."

Opponents of H.R. 8722 then contend that it cannot be said with substantial assurance that the presumed fact of decoying or inveiglement is more likely than not to have occurred when a person voluntarily agrees to travel to a particular destination and fails to arrive after a reasonable period after the commencement of travel.

I believe if someone makes plans to travel to a certain place, advising the people in that place when he or she is to arrive, accepts transportation from a stranger in order to get there, and fails to arrive in a reasonable period, it is not an unreasonable presumption to suspect foul play may have occurred.

Further, as a practical matter, it is extremely unlikely that the legislation will ever be challenged on constitutional grounds because, by the time the case goes to trial, the facts will have been established and the validity of the presumption will have been established simultaneously.

However, let us assume for a moment that this constitutional challenge is leveled at H.R. 8722. If the court test cited above is applicable to the presumption created by H.R. 8722, then it must also be applicable to the present 24 hour presumption. In both cases, the constitutionality would rise or fall on whether there is a rational connection between the presumed fact and the proven fact.

I cannot offer any concrete data to prove that based on past experience, the presumption of H.R. 8722 is valid, for that data does not exist. However, it must be noted in this regard that the Supreme Court has stated ". . . the congressional course weighs heavily," in determining the constitutionality of the presumption.

It has been argued that notwithstanding any Congressional determination, if there are no facts to support an otherwise unconstitutional presumption, the courts could find the presumption invalid. Thus, it is concluded that H.R. 8722 will be found unconstitutional because there are no developed concrete facts to support its presumption.

At this time, I would like to point out if that logic is followed, and if H.R. 8722 is unconstitutional on these grounds, then so, too, is the cornerstone of the FBI's investigatory authority unconstitutional. I refer to the 24 hour presumption on which the FBI bases its investigatory authority in a vast number of cases. I say this because the FBI has absolutely no knowledge of how many kidnapping cases it investigates which involve the interstate transportation of the victim. There is no proof available to establish that there is a reasonable connection between the facts presumed and the facts proved.

Having gone through this analysis to establish that the same assumptions underpinning the validity of the present 24 hour presumption also underpin the validity of the presumptions of H.R. 8722, I again point out that it is extremely unlikely, as a practical matter, that in an individual case such a challenge would be raised since by the time the case was brought to trial, the facts would have been established.

It is my view, as it is the view of many legal scholars, that the FBI did and does have the authority to intervene in the Levy case. The law as presently written does not require proof that interstate lines have been crossed prior to federal intervention. Present law creates a 24 hour presumption. The refusal of the FBI to investigate cases of the Levy type would appear to result not from a lack of authority but from an exercise of administrative discretion. However, if the Justice Department contends that it does not have the necessary authority, I believe the Congress should make its intent clear.

Finally, in my view, the present case raises serious questions about the manner in which the FBI interprets its duties under the law. I strongly recommend that your subcommittee exercise an increasingly watchful eye over the manner in which the FBI construes its authority to insure that these definitions are consistent with the objectives of the Congress.

Mr. CONYERS. I would like to call as our next witness Deputy Assistant U.S. Attorney General in the Criminal Division, Mr. John C. Keeney, as well as Mr. Robert [Richard] Gallagher of the Federal Bureau of Investigation, the General Investigation Division.

We welcome you gentlemen. We have your prepared statement which will be entered in the record at this point, and we invite you to proceed in your own way.

Would you identify the third gentleman with you?

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY RICHARD J. GALLAGHER, FEDERAL BUREAU OF INVESTIGATION, AND LAURENCE S. McWHORTER, CRIMINAL DIVISION

Mr. KEENEY. Thank you, Mr. Chairman.

I am John Keeney of the Criminal Division of the Department of Justice. On my right is Mr. Gallagher of the Federal Bureau of Investigation and on my left is Mr. Laurence McWhorter. He is an attorney in the criminal division.

Mr. Chairman, since my statement is relatively brief, if you don't mind, I will read it into the record.

Mr. CONYERS. Please do.

Mr. KEENEY. Mr. Chairman and members of the committee, I am pleased to appear here today to present the views of the Department of Justice concerning H.R. 4191 and H.R. 8722. As I indicated, I have with me today Mr. R. J. Gallagher of the FBI and Mr. Laurence S. McWhorter, an attorney for our Criminal Division.

H.R. 4191 would amend the Federal kidnaping statute (18 U.S.C. 1201) by removing the exception relating to the abduction of a minor child by a parent. H.R. 8722 would also amend the Federal kidnaping statute by creating a rebuttable presumption that a violation of the statute has occurred when a person who voluntarily agrees to travel with another person to a particular destination does not arrive at such destination after a reasonable period of time.

Because of the recent kidnapings of Miss Patricia Hearst and Atlanta Constitution editor, John R. "Reg" Murphy, I should at this time stress that neither bill would in any way affect Federal investigative jurisdiction in a similar case. The FBI has been investigating both cases since they involve abductions and failure to release the victims within 24 hours and the rebuttable presumption of transportation in interstate or foreign commerce was clearly applicable. Incidentally, in the Murphy kidnaping there is some doubt that Mr. Murphy was transported in interstate commerce so the suspects were charged with extortion under the Hobbs Act, 18 U.S.C. 1951, rather than under the kidnaping statute.

For reasons which I will now explain the Department is opposed to both H.R. 4191 and H.R. 8722.

I will first address my comments toward H.R. 8722. The introduction of this bill apparently came as a direct outgrowth of the mysterious disappearance of Miss Karen Merle Levy, of Cherry Hill, N.J., from the campus of Syracuse University on November 10, 1972. In communications to the Department and the Bureau, various persons have pressed for the FBI to actively investigate this matter. However, the Bureau is not actively investigating the disappearance of Miss Levy because in our view there has been developed no evidence indicating that she was abducted which is a statutory requirement for Federal jurisdiction under the kidnaping statute.

I should point out that in the situation involving the disappearance of Miss Levy, the Bureau has maintained close contact with the local investigating officials and has discussed the matter with the U.S. attorney's office for the Northern District of New York. Additionally, the FBI has offered the full use of all its usual service facilities to the local authorities. In fact the FBI has run out-of-State leads for the Syracuse Police Department.

H.R. 8722 is obviously intended to give the FBI investigative jurisdiction in disappearance situations such as that of Miss Levy. But in so doing it would thrust the FBI into countless missing persons cases where there is no evidence of any involuntary seizure and detention. Although exact figures are not available, the information supplied by the FBI in an addendum to this statement indicates the innumerable cases each year in our highly mobile society where a person voluntarily starts on a trip with another person, but, equally as voluntarily, changes his mind and destination without informing those who were expecting him at his original destination point. Under this proposed amendment to the Federal kidnaping statute, such instances would require the FBI to become involved in a multitude of domestic, runaway, and other personal situations which frequently involve no violation of law. Even where violations are involved they should more properly be handled by local authorities.

It should be noted that if H.R. 8722 were enacted it would create a presumption of kidnaping; whereas, the present statute merely provides that the failure to release the victim of a kidnaping within 24 hours creates a rebuttable presumption that the victim has been transported in interstate commerce. The 24-hour presumption merely presumes that there is Federal jurisdiction where the crime of kidnaping has clearly been committed; the presumption which would be created by H.R. 8722 is that a crime has in fact been committed.

I should now like to direct my remarks toward H.R. 4191, which would remove from the present kidnaping statute the exception where a minor child is abducted or held by one of his parents.

In June of 1932 when the House of Representatives was considering the legislation which became the Federal Kidnaping Statute—commonly called the Lindbergh Act—the words "or held for any other unlawful purpose" were stricken from the bill by amendment so that the "kidnaping" of a child by either a husband or wife who were divorced or living apart would not be covered. The Lindbergh Act was amended on May 18, 1934, in part by the addition of the words, "or otherwise, except, in the case of a minor, by a parent thereof." The purpose of the amendment as stated in House Report No. 1457 was to extend Federal jurisdiction under the act to persons who have been kidnaped and held, not only for reward, but for any other reason, except that the kidnaping by a parent of his own child was specifically exempted. The clear public policy for over 40 years has been to exempt the parent-minor child situation from the coverage of the Kidnaping Act. We believe that exemption to be sound public policy and recommend that it be continued.

Now, with respect to that particular proposal, it isn't in my statement, but it might be of interest to the committee, I should like to state the policy which the Department of Justice follows in connection with a parent's abduction of a child.

If the abduction constitutes a violation and there is a filing in the local jurisdiction of a felony charge against the parent, and if the circumstances indicate that either the physical or moral welfare of the child will be impaired, the Criminal Division has a policy under the Fugitive Felon Act of asking the FBI to investigate, arrest the parent and, in particular, to free the child from what is believed in that situation to be unwholesome custody by one of his parents.

Mr. CONYERS. Are you saying then, sir, the FBI does operate in questions of parental abduction?

Mr. KEENEY. In very limited situations, Chairman Conyers. The situation requires that there be a felony charge filed locally, and, second, that there be evidence indicating that either the physical or moral well-being of the child is in jeopardy.

Mr. CONYERS. Thank you.

Mr. KEENEY. In summary I would like to offer the following comments, some of which have applicability to both H.R. 4191 and H.R. 8722.

Traditionally, the individual States have borne the primary responsibility for providing for the health, welfare, and domestic affairs of their citizens and dealing with local criminal matters. In addition, the upgrading of the efficiency and effectiveness of local and State law enforcement agencies has been a prime objective of Congress, particularly in the past decade, as evidenced by the vast amounts of Federal money that have been dispensed through LEAA to the States for training and equipping local police forces. There is every indication that the desired improvement in State and local enforcement is being achieved. Thus, particularly today, there is no indication that State and local authorities are unable to adequately deal with unexplained disappearances. With the close liaison provided by the FBI, the use of its Laboratory and Identification Divisions, and

its availability to check out-of-state leads upon request, we see little necessity for the FBI to become further involved in local law enforcement.

The provisions of H.R. 4191 and H.R. 8722 would with little reason or justification cause the Federal Government generally, and the FBI particularly, to become involved in countless marital controversies, child custody, runaway and juvenile delinquency situations that are of primary concern to the States involved. Accordingly, the Department is opposed to enactment of both proposed pieces of legislation.

Mr. Chairman, I would be pleased to try to answer any questions you or any other members of the committee might have.

[The attachment follows:]

SELECTED CITIES, CALENDAR YEAR 1973

BALTIMORE

Number of missing persons reported—6,986.
Number of female juvenile missing persons—2,606.
Number of male juvenile missing persons—2,392.
Number of male adult missing persons—1,036.
Number of female adult missing persons—843.
Number of missing persons recovered—6,876.
Average length of time person missing—no figure available.
Estimated missing persons cases normally cleared within a few hours and seldom last for more than two days.

CHICAGO

Number of missing persons reported—22,787.
Number of female juvenile missing persons—9,299.
Number of male juvenile missing persons—7,261.
Number of male adult missing persons—3,214.
Number of female adult missing persons—3,013.
Number recovered—21,758.
Average length of time person missing—no figure available.

CINCINNATI

Number of missing persons—2,073.
Number of female juvenile missing persons—970.
Number of male juvenile missing persons—655.
Number of male adult missing persons—247.
Number of female adult missing persons—201.
Number of missing persons recovered—1,979.
Average length of time person missing—Based on a random sampling of 150 to 200 juvenile missing persons, average length of time person missing was 10 days.
In addition to above, 702 walk-aways reported by Longview State Mental Hospital.

DETROIT

Number of missing persons—8,908.
Number of female juvenile missing persons—3,718.
Number of male juvenile missing persons—2,963.
Number of male adult missing persons—988.
Number of adult female missing persons—1,239.
Number recovered—91%.
Average length of time—36 hours.
Due to a change in procedure during 1973 for handling missing persons, the number of male adults and number of female adults are estimates.

HOUSTON

Number of missing persons—6,632.
Number of female juvenile missing persons—3,134.
Number of male juvenile missing persons—2,334.
Number of male adult missing persons—672.
Number of female adult missing persons—493.
Number of missing persons recovered—6,421.
Average length of time person missing—not available.

LOS ANGELES

Number of missing persons—7,471.
Number of juvenile missing persons—6,866 (not broken down into male and female).
Number of adult missing persons—605 (no breakdown as to sex).
Number of missing persons returned—97% of the 605 adults were located.
No record maintained re number of juveniles located.
Average length of time person missing—no figures available.

MIAMI

The following figures are a combination of a number of missing persons handled by Dade County Public Safety Department and the Miami Police Department who handled 80% to 90% of the missing persons matters in Dade County, Florida. In all, 27 local jurisdictions received such matters within Dade County.
Number of missing persons—6,336.
Number of juvenile missing persons—4,753 (no breakdown as to sex available).
Number of adult missing persons 1,583 (no breakdown as to sex available).
Number of missing persons recovered Dade County—99.4%; Miami PD—97%.
Average length of time person missing—Dade County estimates average length of time 3 to 10 days. Miami Police Department estimates juveniles missing 3 to 14 days; adults, 2 to 4 days.
It is noted the above figures do not reflect requests for assistance by other agencies received by Dade County and city of Miami. Dade County estimates 544 such requests in 1973; Miami reports 717 such assists.

NEW YORK

Number of missing persons reported—17,465.
Number of female juvenile missing persons (ages 1–17)—7,247.
Number of male juvenile missing persons (ages 1–17)—6,165.
Number of male adult missing persons—2,390.
Number of female adult missing persons—1,696.
Number of missing persons recovered—estimated 94%.
Average length of time person missing—juveniles—1 day; adults—1 week.

SALT LAKE CITY

Number of missing persons reported—1,149.
Salt Lake City Police Department maintains no breakdowns as to sex of juvenile missing persons but estimates two thirds female and one third male.
Total number of juvenile missing persons—951.
Total number of male adult missing persons—99.
Total number of female adult missing persons—99.
Salt Lake City Police Department maintains no record of number of adult missing persons located or time individual missing, but during past three years only three juvenile missing persons have not been located and the percentage of recovery regarding juveniles is approximately 99.9%

MISSING PERSONS

The Report of Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate, on Runaway Youth, January 13 and 14, 1972, on page 6 stated:

While there is presently no organized national research on the size of the runaway problem, available information indicates that as many as one million children run away each year.

Surveys in two major cities indicate the majority of the runaways are girls. In Minneapolis, 53% of the runaways in 1969 were girls. In New York City the Missing Persons Bureau estimates that approximately 55% of all runaways reported during the last four years were girls.

Runaway children are much younger than might be expected and they are younger each year. In 1963 and 1964, the most common ages noted for runaways were 16 and 17. In the past few years the age has dropped to 15. Recently, there had been an alarming increase in the number of very young runaways. In New York City, for example, 43% of the runaways are between the ages of 11 and 14. Indications are that this group may become the single largest runaway age group. Fifty-five per cent of the girl runaways in New York City are already in the 11 to 14 age group.

Mr. CONYERS. I thank you for your statement.

My first observation is that the information on how the university police, and the Syracuse police operated in the *Levy* case brings to mind one aspect of law enforcement that, I think, is of increasing concern to the House Judiciary Committee, and that is the tremendous tangle and overlap of law enforcement agencies at the city, county, State, and Federal levels frequently create a great number of problems.

As far as you know, have there been any studies on the question of simplifying the law enforcement agency overlap that frequently contributes to an uncoordinated investigation?

In other words, in all of the experience you gentlemen have accumulated in the Department of Justice, has anyone started looking at this, going far beyond the immediate considerations of this legislation?

Mr. GALLAGHER. Mr. Chairman, before I answer the question, with your permission, I would like to correct the record. My name is Richard J., not Robert.

Mr. CONYERS. That is an important clarification. We would have otherwise had the wrong person before us, or at least not the person we expected. All right. Now that we know who you are, we will have to take you off the missing persons list.

Mr. GALLAGHER. Thank you very much. I have been recovered.

I would like to say, before I answer the question, that I share the concern as a parent that Mr. and Mrs. Levy have. They have gone through a very traumatic experience. I also appreciate the concern of both Congressman Forsythe and Congressman Bennett in their legislation. And, as I told your learned counsel, one of the things I highly subscribe to is WTTG channel 5 television every night saying, "Do you know where your children are."

We are faced with a real problem. Representative Forsythe questioned the figure of a million. My only basis for a figure like that is from the Senate committee hearings. That is what they came up with.

But to answer your specific question, to my knowledge, there has never been a study such as that. The FBI and also Congress historically have been against any Federal police agency.

Mr. CONYERS. That is not what I suggested.

Mr. GALLAGHER. I know what you said. You said was there any study made about the overlapping. The answer is I don't know of any.

Mr. CONYERS. Now, doesn't some improved recommended procedure, again, talking from the broad view, suggest itself to the Department of Justice?

I am, frankly, disturbed with the policy of young students using ride boards, which exist on many campuses, to solicit transportation. Has the Justice Department considered it appropriate, perhaps, to advise universities and colleges of the nature of the danger in this kind of travel? This might include a recital of the numbers of people missing, the number of deaths, and, in some way, official discouragement of the practice.

Now, I understand that because of the *Levy* case some campuses have prohibited ride boards.

Mr. GALLAGHER. The answer to that is "No." I think the suggestion is a good one. Some years ago, the FBI put out a flyer warning parents to tell their children not to accept candy from people, not to accept rides. It was aimed at children and that was very, very well received.

To my knowledge, all of the colleges and universities have not been contacted across the board, but I think the suggestion is a good one.

Mr. CONYERS. Let's look at the legal problems involved here in terms of the proposed legislation: Does the FBI have jurisdiction or doesn't it? There seems to be more than one school of thought on this question. Of course, your argument is that they do not. Is this a close question in your judgment? Is it reasonable that there could be two schools of thought among legal scholars on this subject? I address this to all of you.

Mr. KEENEY. Well, I think, Chairman Conyers, in the factual situation presented in the *Levy* case, based on the experience with people in similar circumstances who have taken a ride, they intended to go out of State with someone else and did not show up, the experience has indicated that they have not turned up for a variety of reasons, not all of which are consistent with kidnaping.

So what I am saying, really, is that kidnaping is one possible inference, but there are a number of other logical inferences that could have been drawn from the particular situation. And our conclusion was that the inferences that could be drawn were not strong enough to warrant a presumption of kidnaping.

Mr. FROEHLICH. Mr. Chairman, would you yield?

Mr. CONYERS. Yes.

Mr. FROEHLICH. On this point, will you give us the other inferences that could be drawn in his case?

Mr. KEENEY. One inference that can be drawn is that for some reason or other the individual changed his mind, where he originally had intended to run away, others where there had been accidents, and various circumstances that have come up as frequently as the kidnaping situation in this sort of factual context.

Mr. COHEN. Would the gentleman yield?

Mr. FROEHLICH. I yield.

Mr. GALLAGHER. In answer to your question, Mr. Froehlich, a similar case occurred in Fredericksburg, Va., about 2 years ago, where a

girl with an impeccable reputation went out on a date and she was not seen again. And there was all kinds of pressure for the FBI to get into that case. Her body and the body of her boyfriend were found in the Virginia Electric Power Canal, just a couple of miles from where they were last seen. They had gone off the road, gone into the ditch, and were covered with 14 feet of water. They turned up right there.

Maybe it would help the committee, Mr. Chairman, if I could tell just how we do operate in these situations.

If there is anything at all to indicate an abduction, we will go in under the 24-hour presumptive clause. That is, if there are two children playing and one child says, "Johnny went away, a man came and talked to him and they left," if there is somebody who heard a child screaming; yes.

We had one in Michigan just this past fall, that we conducted a kidnaping investigation on. A girl from the University of Michigan was missing. A few days later her automobile was found in Wisconsin, and to us that was an indication she had been kidnaped or abducted and we conducted an investigation. And in November last year they found her body, not too far away in Mount Hope, Mich. So we turned this back to the local authorities. But we did conduct a kidnaping investigation and we have done many of those.

Mr. CONYERS. I yield to the gentleman from Maine.

Mr. COHEN. I would just like to know, what sort of positive indications did you look for in this particular case? We have been talking about generalities, but I would like to talk about the specifics of this case.

For example, you obviously consider the fact she took a ride with a stranger; right?

Mr. GALLAGHER. That is right.

Mr. COHEN. Not a friend, which would certainly eliminate some of the other inferences you might otherwise draw. I assume you checked into her good moral character. I would assume you would make a check into a girl or boy's background to see what sort of moral character he or she had. Am I correct? Or don't you know that?

Mr. GALLAGHER. Yes. But are we speaking specifically about the *Levy* case?

Mr. COHEN. Yes; specifically.

Mr. GALLAGHER. All right. In the *Levy* case, the first indication we had that Miss Levy was missing was a couple of days after she had disappeared, when a private investigator told us about it. And he told us, basically, what Congressman Forsythe in his prepared statement said. On the same day, Mrs. Levy contacted our Newark office. We got all of the facts, and we in this case went to the U.S. attorney and said, "this is the story, this is what it is," and he said, "It is not a violation of the Federal kidnaping statute." And we did not conduct an active investigation.

We did establish liaison with the Syracuse Police Department. We offered them all of our facilities and we covered leads in nine States for them, as they developed leads, but the police conducted the actual investigation.

Mr. COHEN. Let me approach it by a different tack to get the same point. In conducting your investigation, obviously, you consider certain

factors to determine whether or not she had been abducted or taken away against her will. You would consider whether she was riding with a stranger or a friend, alone in her own car or with another person. That would be a factor; right?

Mr. GALLAGHER. Yes.

Mr. COHEN. You consider again her good moral character in terms of running away; right?

Mr. GALLAGHER. Right.

Mr. COHEN. You would also take into account the fact she was living at college and this was not a typical case of a runaway from home because she was not at home; correct?

Mr. GALLAGHER. Yes.

Mr. COHEN. That could kind of eliminate that inference she was running away from home. I assumed you checked into her grades to find out whether she was depressed, upset about exams or leaving school, whatever, again to engage certain inferences she was just leaving school and was fed up with college. Right?

Mr. GALLAGHER. We didn't in this case, you know.

Mr. COHEN. You what?

Mr. GALLAGHER. We did not in this case.

Mr. COHEN. That is what I am getting at. Why not?

Mr. GALLAGHER. Well, in this case here, Miss Levy solicited this ride, which to us indicated she went voluntarily.

Mr. COHEN. Let me just interrupt for a moment. I assume you can voluntarily take a ride and at some point along that ride, it can become involuntarily when you suddenly go by your destination. It then becomes as much a taking or carrying away as sure as if you were hitchhiking along the side of the road, and got carried away?

Mr. GALLAGHER. I would like to read you something from Mr. Forsythe's news release that was just handed me. He said, "The *Levy* case was not unique. On any given weekend, more than 5,000 students accept rides from information on college rideboards just as Karen Levy did."

All of those go voluntarily. Every child that goes to Fort Lauderdale, Fla., for the summer.

Mr. COHEN. I understand that and I understand the general opinion. What I am saying is—let's look at the facts, the specifics of this case and you can eliminate that 30,000 that go to the Lauderdale beaches. Let's see her plans, talk to her friends; what kind of a girl was she? Isn't that how you eliminate the inferences so you can say in this case the presumption or inference is fairly clear there is something wrong here and she has been missing more than 24 hours, she was headed for another State and we ought to get involved?

That is what is troublesome to me, when you just lay down a rigid rule. As I said before, we tend to apply a rule of thumb rather than a rule of reason, and that is what is upsetting to me.

Mr. GALLAGHER. In this particular case, based on the information furnished to us by the private investigator who went to the U.S. attorney, we then established contact with the local police and as they developed information, they told us about it. And there was nothing ever developed that she was abducted.

Mr. COHEN. Once again, you did not consider all of these factors that I just went through—the stranger, the character, the fact she was not living at home, not going to be a runaway type of person,

grades are good, not depressed. Aren't those the determinations you make in investigating any case; these sort of factors you take into account? Otherwise, you just label it under a big rule saying she got voluntarily into the car, although it was apparent we haven't heard from her since.

That does not seem to me to be serving the people in this country in that case.

Mr. GALLAGHER. As a matter of logistics, the FBI has 8,496 special agents, and last year, 1973, the total number of missing persons that were reported to us were 1,964. Just missing persons that we did not conduct any investigation. The matter was referred to the police. We rendered considerable assistance in 62 cases to the police—laboratory and all kinds of things.

I am going to go back and I am reading these statistics, because Mr. Rangel is here and he raised a question with Congressman Bennett about whether or not his bill would require a court order.

We conducted 197 investigations in parent-child situations and we had 470 cases that we didn't. Now, we do not differentiate whether it is a court order or not. If the person is abducted, that is all we care about. We are not interested in whether there is a court order, if they are separated or not. And whenever a parent takes a child, unless we know definitely at the outset, we will conduct an investigation to determine if the parent does have the child and when we do, we drop it.

So we had 667 of those.

Now, we had 146 cases where we conducted complete investigation and the matter was prosecuted in local court. And among those cases was the abduction of Mrs. Dealy, the wife of the editor or publisher of the Dallas paper; Mrs. Taylor, in Texas, the wife of a funeral director; the abduction of a wealthy contractor's son in North Attleboro, Mass., and in fact, the local district attorney wrote a letter in November, thanking the FBI for making 20 agents available in his trial.

So these are the cases that we are faced with. And as Mr. Forsythe pointed out, the *Levy* case could apply to maybe 500,000 people.

Mr. COHEN. In the sense only of a student taking a ride and going someplace, but that is just the broad, general statement.

Mr. GALLAGHER. That is right.

Mr. COHEN. It seems to me there is an obligation if we do have the local police who do some initial preparatory investigative work or even the private detective, you say "look at these facts here, they don't add up to simply a college girl taking a ride to Fort Lauderdale on spring vacation." It seems to me by the process of elimination of these other inferences you come unalterably to one conclusion, there has been foul play.

I heard the argument raised today because in attempts to create a presumption of abduction, therefor it is unconstitutional, that the other presumption, 24-hour missing period, only creates the presumption of interstate travel, thereby allowing the Federal Government to intervene, get jurisdiction. It seems to me that transportation is just as essential an element of the crime as the actual abduction. Let's assume, for example, if it is known there is no interstate transportation, the case is dismissed; right?

Mr. GALLAGHER. If there is no interstate transportation, we turn the whole thing over.

Mr. COHEN. No Federal crime?

Mr. GALLAGHER. We give all of the information we have accumulated to the local authorities.

Mr. COHEN. Because there is no Federal crime?

Mr. KEENEY. May I interject?

We did not intend to challenge whether or not the Congress could, in fact, create the presumption of a crime for investigative purposes. We really never intended to address ourselves to that. We just wanted to point out what was being done here is that you are presuming that a crime has been committed. We did not address ourselves in any manner as to whether the Congress could constitutionally do it. My offhand opinion is Congress could. So we did not mean to raise that issue.

Mr. COHEN. Congressman Forsythe is trying to emphasize he would like to see where the FBI could become involved at least for the purpose of investigation. It seems to me that he is trying to put into legislative form the discretion that was already here. And that creates additional problem for you in terms of workloads, and so forth.

But it seems to me, you can, if you approach these cases and get your preliminary report by simple questions which occur to the ordinary person. This does not sound like the average case of runaway because it is not a runaway from home. Happy family life, parents satisfied, child satisfied, good grades, good reputation, and now she is gone. It seems to me that is the case where you could have exercised, and should have exercised a lot more discretion in turning it over.

I guess I have taken up all of the time.

Mr. CONYERS. Might I persist in one question that the gentleman from Maine has been trying to emphasize. Doesn't the *Levy* case distinguish itself from the several other kinds of cases that might otherwise fall into the general category of "missing persons?"

Mr. GALLAGHER. I would say, yes, it does, but it is not unique. There are hundreds of cases like the *Levy* case; not millions, though. Because many of the millions are children who wander away from home; and one of the things that shocked me in reading the Senate report was the statement that such a large percentage of the children in New York were from 11 to 14. That is awfully young.

And I would say, to answer the question, it does differentiate from the millions but it is not unique.

Mr. CONYERS. Of course, it does.

Now let me ask you one other question, not pursued by the gentleman from Maine, which I think is an extremely important factor in this case, as it has been reported to us. And that is that Karen Levy was very skeptical about going on this ride in the first place. Isn't that correct? Wasn't that revealed rather early in your cooperation with the police?

Mr. GALLAGHER. I believe it was. I believe that the individual said he was not a student, that he was a businessman, and that she had her roommate and her roommate's boyfriend go down with her.

Mr. CONYERS. Exactly, so that this case distinguishes itself from the usual kind of college campus ride situation, because reservations about accepting the ride were clearly articulated by Karen Levy before her disappearance. She brought two friends with her to try to

make an examination of the driver because, even then, as it was revealed, she was not sure that she would take the ride because of circumstances that troubled her.

So that it would seem that in this kind of fact situation, there should have been no reason for the FBI not to have conducted an investigation with the rebuttable presumptions still obtaining in the law.

Now, it seems to me, further, that there was, at least, sufficient reason for you to cooperate. What would have been the difference between entering the case officially and the cooperation that you extended to the local police officers?

Mr. GALLAGHER. Well, the difference would have been if we had gone into this case, we would have done all that the police did, check everybody in the parking lot, check everybody that put notices on the bulletin board, do all of the investigation at Syracuse University. We did none of that. We did all of the investigation they requested outside, outside the State of New York.

Mr. CONYERS. Is it not possible that this case might have had a different result otherwise?

Mr. GALLAGHER. I wouldn't say.

Mr. CONYERS. Who in the Department of Justice in New York determined that this case was not one the FBI should pursue?

Mr. GALLAGHER. It was the assistant U.S. attorney in the northern district of New York.

Mrs. LEVY. It was Mr. Sullivan.

Mr. GALLAGHER. Eugene Welch.

Mrs. LEVY. Welch and Sullivan, I believe.

Mr. GALLAGHER. He was assistant U.S. attorney in the northern district of New York. We are an investigative agency. We discussed this case with him.

Mr. CONYERS. Is he the attorney in charge for that office?

Mr. GALLAGHER. He is an assistant U.S. attorney.

Mr. CONYERS. So there is someone over him in that office?

Mr. GALLAGHER. Yes, sir.

Mr. CONYERS. I yield to Mr. Rangel.

Mr. RANGEL. As a former assistant U.S. attorney, I was under the impression that the Federal Bureau of Investigation made their own determinations and that the U.S. attorney's office would concern itself as to which cases it would prosecute, or if the FBI decided to investigate what additional information they would need. Are you saying that the responsibility of deciding the scope of an investigation, now, rests with an assistant U.S. attorney?

Mr. GALLAGHER. No, sir; we are not.

Mr. RANGEL. So, ultimately, it was somebody in the Federal Bureau of Investigation that made the determination that this was not within their jurisdiction?

Mr. GALLAGHER. Let me answer the question this way: The agent in charge of our Albany office, which covers Syracuse, reviewed all of the facts along with the case agent and they did not feel this was a violation. They then discussed it with the U.S. attorney—here are the facts, is this a violation of the Federal kidnaping statute—and he said, "No, it is not."

Then we could have gone to the Department of Justice and ultimately it was brought to the Department of Justice.

Mr. CONYERS. What I gather from that, then, is that there is no question that the state of the law allows the Federal Bureau of Investigation to investigate these kinds of cases on the presentation of certain facts, correct?

Mr. GALLAGHER. That is right. Any time there is any indication.

Mr. CONYERS. In the judgment, apparently, of the FBI or assistant attorney, in the northern district, the facts in this case were insufficient to warrant the immediate investigation of the FBI.

Now, if the same facts arose in another similar missing persons case, am I to presume that the U.S. attorney's office and the FBI would again decline; I mean, is this a hard matter of precedent we are following now? And I suppose I should invite Mr. Keeney to join in this discussion for the record. I mean, are we cast in concrete now with the Levy matter as a precedent?

Mr. GALLAGHER. Each case, I would say has to be judged on its merit and as I said earlier, if there is the slightest indication, anything at all, that the victim has been abducted, after 24 hours we will go into this.

Mr. CONYERS. Well, that is precisely what is bothering more members on this committee. There seemed to be a number of indicia that would warrant at least an investigation. Here was a college person who tried to get a ride on the college campus ride board, was suspicious about the person who had indicated he would give her a ride, brought two friends to look him over, and made her destination and arrival time clear before she departed. How much more suspicion need be brought into the case?

I mean, statistics show that the FBI is involved in cases involving the interstate transportation of stolen cattle, and that they prosecute people across the country for that very serious crime. But at the same time, we have a serious matter that involves people, and we think the most that the FBI can do is cooperate with the police. And I am trying to find out from all of you gentlemen whether the *Levy* case establishes within the Department of Justice a precedent.

Mr. KEENEY. Mr. Conyers, I will speak for the Criminal Division. The *Levy* case was reviewed by the Bureau and by the Department and it was concluded that there were not sufficient indicia of kidnapping to warrant going into the case. But——

Mr. COHEN. Could I interrupt?

Mr. KEENEY [continuing]. We do recognize the concern of this committee and if we get a similar type situation in the future, we are certainly going to give it a terribly close look in the light of the comments we have heard today from the various members of the committee.

Mr. CONYERS. I yield to the gentleman from Maine.

Mr. COHEN. I would like to point out, I have been referring to the private investigator's report that has been brought to our attention and it points out at least one member of the FBI, Mr. Quackenbush——

Mr. GALLAGHER. Who?

Mr. COHEN. Quackenbush. Are you familiar with that name?

Mr. GALLAGHER. No.

Mr. COHEN [continuing]. Did indicate that he concurred with the private investigator's view that "Karen has undoubtedly been

abducted or kidnaped. It was the opinion of Mr. Sullivan that the evidence thus far developed was insufficient to warrant Federal intervention in the case, principally because Karen had voluntarily accompanied Lacey and no evidence that she had been forced or coerced in taking the proposed ride." So apparently some member of the FBI felt there was sufficient evidence that was overruled by the Justice Department, or at least the U.S. attorney.

This brings back into focus the principal question we are concerned with, that just because you have a voluntary ride, does that mean as a flat, broad rule that there will be no FBI intervention because there is a voluntary departure even though there would be other factors that would cause an ordinary person to exclude other inferences?

Mr. GALLAGHER. I would say we have to take each case, and if it were voluntary with other factors involved, we would do it. As a matter of fact, Mr. Murphy went voluntarily. He went voluntarily, but other factors entered into it.

Mr. CONYERS. Would the gentleman yield?

Mr. COHEN. Yes.

Mr. CONYERS. Would you try to distinguish the other factors in the *Murphy* case from the other factors in the *Levy* case?

Mr. GALLAGHER. Well, in the *Murphy* case, Mr. Murphy went down, he voluntarily went with an individual who said he had oil to give to the poor, and he disappeared. But a telephone call was received from an individual, saying "We have Mr. Murphy." So we knew that he had been abducted and we moved in because that was our evidence that an abduction occurred. There was a phone call. Another factor came into that.

Mr. CONYERS. I recognize the gentleman from New Jersey, Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Chairman.

Mr. Gallagher, we had a great deal of discussion here about why the FBI did not intervene in the *Levy* case. I understand the reasons, I do not agree with them. But we are talking now about legislation, about H.R. 8722, which provides that where a person voluntarily accepts a ride and then does not arrive at the destination within a reasonable time, there then is a rebuttable presumption that that person, who originally voluntarily went on this ride, comes within the purview of section 1201, in that she was inveigled or decoyed.

That is simply what H.R. 8722 provides.

Now, isn't that a reasonable position to take? This is the point that we are really discussing today. Isn't that a reasonable position to take?

Mr. GALLAGHER. Could I ask you a question?

Mr. MARAZITI. Well, may I suggest—certainly I will submit to a question—you answer my question first. Go ahead.

Mr. GALLAGHER. All right. I need the answer to yours, what is a reasonable time?

Mr. MARAZITI. Now you are raising a completely different point.

Mr. GALLAGHER. Yes, I know that.

Mr. MARAZITI. And you may have something there. Now, this is the thought that occurred to me. Before I answer your question——

Mr. GALLAGHER. No.

Mr. MARAZITI. Assume that the term "reasonable time" could be determined. In this case, I think it is over a year; wouldn't you assume that is a reasonable time?

Getting back to your point, I could see perhaps the advisability of putting down a certain period of time and perhaps the committee might do this. But it might not be wise because what might be a 24-hour period in one case ought to be a week in another case. And I think the question of "reasonable time" would probably have to be determined by the FBI and I would say you had better use some reasonable discretion in determining that, too. You cannot wait a year in some cases and in others you cannot wait a week.

In the final analysis that is a subject of interpretation and I would suggest it be left open, "reasonable time." And I think that is understood what is meant by that. It does not take a week to go from Syracuse to Monmouth College in New Jersey, and maybe a day isn't long enough, but I think 3 or 4 days is a reasonable time.

Mr. CONYERS. We are close to the time where, technically, subcommittees are not permitted to sit. I would invite any members who have any comments that they would want on the record, to address them to the witnesses now.

I would like to ask Mr. Keeney, as a result of this colloquy if it is unfair to say that what we really need, perhaps, more than legislation is a sharper policy definition within the FBI as to what are investigatable factual circumstances?

Mr. KEENEY. I do not know whether I can answer that, but I would like to reiterate the fact that we took a factual situation here, we reached a conclusion, the FBI reached a conclusion that the Department concurred in.

Now we are here with the subcommittee of the House Judiciary Committee and, obviously, from your remarks, you think that we were a little too rigid in our interpretation. We would be less than wise if we did not take that into consideration in any future judgments we made with respect to section 1201 of title 18.

Mr. CONYERS. Do I interpret you to be saying you would take the tragic consequences of the *Levy* case into consideration in applying your policy decisions from this point on?

Mr. KEENEY. We would take in the Criminal Division—I cannot speak for the FBI—we would take into consideration the facts in a certain set of circumstances and that the members of the Judiciary Committee thought that we were taking too narrow an interpretation in drawing inferences with respect to whether or not there had been an abduction.

Mr. CONYERS. I think we have a responsibility to go further than that. I do not hesitate to move to cast this view into law, if it is the will of this committee and the House of Representatives. I think that, perhaps, we can see that the decision made by an assistant attorney not to investigate the *Levy* case, concurred in by the FBI, was a decision that could have, just as easily, been made in the affirmative.

I do not know if it requires the whole force of the Congress to effectuate a reconsideration of this kind of decision because, after all, I do not want to speculate and I think it would be unfair to the Department to start predicting whether Karen Levy would be here today or not. I

think that would be taking unfair advantage of a tremendously traumatic situation, which we know you regret as much as any one of the citizens from Camden County, N.J., who have come up here to make this testimony with Mr. and Mrs. Levy and Congressman Forsythe.

But the fact remains that we might be able to do more if we do not move toward a legislative result, that is, to get a more clearcut policy determination in writing from Justice and the FBI as to what kinds of matters would, in the future, elicit an affirmative response from them.

It seems that we could do that, short of an effective legislative consequence, and possibly not involve many more FBI man-hours than they are already expending on reclaiming stolen cattle and stolen automobiles in interstate commerce.

Would that be an unfair conclusion, Mr. Keeney, for this subcommittee to arrive at, if it does?

Mr. KEENEY. I think, Mr. Conyers, in this context we always have to keep in mind that in factual situations and drawing of inferences—and that was all we could do was draw inferences—reasonable people can disagree. I think that the people who made the decision in this case, and a number of them were involved in it, thought they were right and they still think they were right. But on the other hand, the fact that members of this committee disagree with the failure to draw inferences, we will have to consider in the future.

Mr. CONYERS. Are there any other observations from the members of the subcommittee?

Mr. FROEHLICH. Mr. Chairman.

Mr. CONYERS. I recognize the gentleman from Wisconsin.

Mr. FROEHLICH. If I gage this committee, and certainly speaking for myself, I think you made the wrong judgment in this case.

Now, the question is whether the bill as drafted is the best way of correcting that judgment or whether different wording will correct that error in judgment that I believe you made.

If this bill does it improperly or if there is a better way legislatively to do it, can you suggest one? I think this committee should act.

Mr. KEENEY. Mr. Froehlich, our concern with the bill is that it would cover too broad a category of persons and would put an insurmountable burden on a relatively small investigative force.

Mr. FROEHLICH. Can you suggest different legislation that would require the FBI to get involved in the facts of the *Levy* case, if that case appeared again?

Mr. KEENEY. Offhand, I could not, Mr. Froehlich, I would like to think about it.

Mr. FROEHLICH. Please do.

Mr. CONYERS. I want to thank you gentlemen. Your testimony has been very helpful.

At this point, I would like to place in the record the statement of the Honorable William F. Walsh in support of H.R. 8722.

[The prepared statement of Hon. William F. Walsh follows:]

STATEMENT OF HON. WILLIAM F. WALSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, it is a truism that we often fail to act to correct certain situations until tragedy strikes. It often takes a tragedy to point out unclear sections of law and to set in motion the wheels of change.

Title 18, Section 1201 of the U.S. Code is a case in point and the tragedy was the disappearance of Karen Levy, a student at Syracuse University in Syracuse, New York.

Miss Levy lived in Cherry Hill, New Jersey and was attending Syracuse University. She was looking for a ride home and was offered transportation by someone known only as Bill Lacey. Lacey had contacted her after she posted a notice on the college bulletin board seeking a ride to New Jersey. This is a very common practice in all of our educational institutions.

On November 10, 1972, Miss Levy left on her trip and has not been heard from since. An exhaustive search was made near Syracuse when a report was received that a man was seen placing what appeared to be an unconscious woman in an automobile. The search by local police, county sheriffs and other law enforcement agencies proved fruitless.

The police tried very hard to conduct a coordinated search. But overlapping jurisdictions and a lack of established procedures for finding missing persons made the search extremely difficult and almost impossible to coordinate.

The FBI, citing the provisions of Section 1201, refused to enter the case because Miss Levy voluntarily agreed to go with Lacey and there was no evidence that State lines had been crossed. Section 1201 states that a person has to be unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise and transported across State lines for the FBI to enter the case.

Mr. Chairman, as my distinguished colleague, Mr. Forsythe, has pointed out, there are significant opinions available from many top legal minds which point out that the FBI does indeed have the authority under 1201 to enter a case such as this. I feel that the intent of Section 1201 is clear; but apparently there is a real need for further clarification.

Mr. Forsythe has introduced a bill, H.R. 8722, which would create the assumption that a person who voluntarily agrees to travel with another to a particular destination, but who does not arrive after a reasonable time is inveigled or decoyed within the meaning of Section 1201.

The FBI has the knowledge and the training to coordinate a search for a person reported missing. Their expertise in this case might well have made a difference and would surely have made the search quicker and more accurate. Time is the all-important factor in these cases and a single minute might make the difference between success or failure.

Mr. Chairman, this is indeed an important bill and I urge that it be favorably reported to the full House without amendment. Karen Levy might well have been alive today if Federal law enforcement officials had entered the search. While it is possibly too late in this case, we have a clear duty to try to prevent similar happenings in the future.

Mr. CONYERS. Now, I am going to recognize and ask them to submit statements, the coordinators from both the California Citizens Committee to Amend Title 18 and the Virginia Citizens Committee to Amend Title 18. We have with us Mrs. Beth Kurrus of Newhall, Calif., and Mr. Dennis Wilburn of Richmond, Va. We also have with us Ms. Bernette Der Paulian of Long Beach, Calif. We welcome you to these proceedings. We invite you to submit a written statement, which will be incorporated into these proceedings.

[The prepared statements follow:]

CITIZENS' COMMITTEE TO AMEND TITLE 18, SECTION 1201a, OF THE U.S. CODE

Newhall, Calif., February 27, 1974.

Mr. Chairman and Gentlemen of the Subcommittee:

Please accept our grateful appreciation for this occasion to express our views on the subject of the kidnapping of children across state lines in violation of custody orders. As Coordinator of the Citizens' Committee to Amend Title 18, Section 1201a, of the U.S. Code, I am absolutely certain that I speak for each and every custodial parent whose children have ever been taken from them by an ex-spouse.

Our appeal to you is made on two points. First . . . that states cannot or will not do the necessary investigatory work needed in such custody kidnappings, and,

Second . . . that when children are taken across state lines, a suitable federal vehicle is necessary—and is available—to apprehend them.

We do not at this time wish to negate or to underestimate the fine work that is often done by state and local law-enforcement officers. But, we feel that when their jurisdiction ends, another one greater in scope must be utilized.

Title 18, Section 1201a, exempts a parent from the death penalty—and rightly so. No one wants to kill a parent for taking his or her own children. Even prosecution of kidnapping parents is not relevant to our appeal. However, when a court has given legal custody to one parent, and the other parent takes children out of the state, that state's legal prerogatives appear to wither on the vine because each state has different child-stealing laws and some states have none at all. And, of course, the FBI will not enter such cases to assist.

For almost forty years, the Department of Justice has had a "policy" or a "position" to refrain from assisting custodial parents because it does not want to become involved in "domestic" cases. How then does the Department reconcile the FBI's involvement under Interception of Communications matters? The FBI ANNUAL REPORT for 1973 indicates that "The FBI conducts investigations regarding illegal use or possession of surreptitious listening devices commonly known as "bugs". These violations often involve domestic and marital discord in which services of private detective agencies are used to record conversations obtained by surreptitious listening devices. "Occasionally, the allegations involve industrial espionage." Occasionally. Stolen children vs industrial espionage.

It is reported that the Department "does not favor an amendment to the code to permit the FBI to seek out and protect children awarded to one parent through court action. The position of the Department is that this change in the law would lead to the Federal government becoming involved in family problems and acting as a referee in such court fights." Surely, the Department will not withhold the investigatory powers of the FBI on the assumption that AFTER the court has given custody to one parent, that the Department would be involved in marital affairs any more than state law-enforcement officers are involved after they apprehend intrastate fugitives.

It is with deep dismay that we hear the Department state that it will not enter because it cannot get involved in cases which are civil in nature. But what of the criminal warrants that are issued for kidnapping parents? To say that a state must assume the responsibility of such cases, is, indeed, misrepresenting the issue. By the nature of the state laws, local and state jurisdiction ends at the state borders. The state of California has statutes to cover kidnapping and child-stealing. They are sections #278 and #279 of the PENAL code, but they cannot be effectively applied when children are taken out of California.

It is legally impossible for a state under present laws to physically apprehend a kidnapping parent (or the children) once they are out of that state. Despite Full Faith and Credit Clauses, any action taken is time consuming and often negative in nature. If the law-enforcement officers finally learn the whereabouts of a fugitive parent, and are fortunate to make communication with officers of another state, with effective results, this is fine; but so often this can take many precious days, weeks, and, more often, months. Another state may cooperate fully or it may not.

In the case of Mrs. Victoria Anne Starkey, whose two small children were taken February 12, 1972, from their home in Newhall, California to Oklahoma, Oklahoma cooperated in a desultory manner up to a point, necessitating contact from the Governor of California's Office to that of the Governor of Oklahoma. When California refused to extradite the paternal grandfather involved in the case, local Oklahoma lawmen were loath to act further. Even the Oklahoma State Bureau of Investigation did very little to encourage ones confidence in state handling of such matters. And a law-enforcement officer in Oklahoma City bluntly stated that he didn't have time to follow up leads, investigate utility companies, etc. As most of these companies will not divulge information about their consumers, often even to state officers, it is doubly difficult for individuals who must search on alone. Add to this the lack of reciprocal statutes among the states and we are aghast that the Department suggests that states can properly handle custodial kidnapping cases when state lines have been crossed. The custodial parent and the stolen children are left in a limboland between the "policy" of the Department of Justice and the "jurisdiction" of the state.

Alarming as this is, there is the added disbelief in the fact that stolen children must compete in the legal arena with such "things" as cars, cattle,

airplanes, switchblade knives, phonograph records, lottery tickets, pinball machines, military uniforms, and most incredible of all, with Smokey the Bear and Johnny Horizon emblems! Title 18, Section 711, states, "that using Smokey the Bear character or name as a trademark or trade name, except in public use for promotion of fire protection, after consultation with the U.S. Forest Service, Secretary of Agriculture, and advertising agencies, will bring a fine of $250.00 or a term in jail up to six months or both." But the important thing is that it will also bring an FBI agent! This section of the code was added on May 23, 1952, 18 years after the kidnapping amendment was introduced which excluded FBI assistance to custodial parents and their stolen children.

The Department of Justice has stated that it has an insufficient number of agents and that there just aren't enough to lend their investigatory powers to the problem of children taken across state lines. However, we wonder at the unusual and important use of these agents as reported on page 56, of the Uniform Crime Reports for 1971: "Contacts by Special Agents of the FBI are utilized to enlist the cooperation of new contributors and to explain the purpose of this Program and the methods of assembling information for reporting. When correspondence, including specially designed questionnaires fail, Special Agents may be directed to visit the contributor to affirmatively resolve the misunderstanding." Would this be listed as a domestic, a civil, or a criminal matter?

Fighting crime, in any form, is a serious matter and justifiably requires the services of fine agents. It is so easy to see that this is true when reading the following item from The Attorney General's Annual Report for 1971: "Highlighting the FBI anti-gambling operations during the year was the largest series of raids in the Bureau's history. The two most extensive of these raids—one conducted on December 12, 1970, and the other on May 6, 1971, *each* required participation by *more than 400 special agents*." Those are many agents, to be utilized in the interest of gambling and crime.

It is interesting to note that the matter of statistics is usually very detailed for all areas of FBI jurisdiction. However, according to the Department, there are no statistics for the number of children stolen across state lines in violation of custody orders. The Citizens' Committee has been trying for many months to get such figures, even for the state of California, without success. But the Department quotes many figures for missing persons—4,972 for 1973, though these figures do not indicate that any are for children missing because they have been taken across state lines in violation of custody orders. The problem of runaway juveniles is hardly germane to the problem of children kidnapped by non-custodial parents.

In Arizona, a private detective has estimated that from 15,000 to 20,000 children a year are taken. A detective agency in New York has said that the figure probably runs into the thousands. This may not seem to be many in comparison to cars. According to the Uniform Crime Reports for 1972, 881,000 motor vehicles were reported stolen in interstate transportation, with 17 percent recovery in large cities or a total of 149,770 cars returned. We could find no figures for 1973, but the FBI Annual Report for that year, lists 2,017 convictions for car thefts. A figure by far the largest in the list of statistics for 1973.

In the booklet, Know Your FBI, it is said, "The FBI was created primarily to handle criminal investigations for the Department of Justice." The warrants that go out on kidnapping parents are criminal in nature and when state lines have been crossed, the resultant cases would certainly fall within the scope of the Department by virtue of Title 18—which deals with the illegal interstate transportation of persons and things.

Our Second point of appeal to you is, we feel a logical continuation of the first, i.e., that given the inability of a state to go beyond its jurisdiction to apprehend a kidnapping parent, the suitable—and available—vehicle of the UFAP warrant needs to be recognized by the Department of Justice to assist a state and, preferably, at the time of issuance of the state warrants.

The 24 hour assumption of kidnapping is a valid assumption for the entrance of the FBI into custodial child-stealing cases just as it is in regular kidnapping cases. When children are not brought home after 24 hours, surely there is the assumption present that they have been taken in violation of custody orders. And when there is evidence that they have indeed been taken interstate, surely there should be no doubt that the resources of the FBI should be put into effect. And this can be done by use of an Unlawful Flight to Avoid Prosecution warrant which is requested by the state of the federal government.

In a letter to Mr. and Mrs. C. E. Billings, of Salome, Arizona, grand-parents of Mrs. Starkey, the following information was sent from the Library of Congress, Congressional Research Service, via Senator Barry Goldwater: "When a valid custody order imposed by a state with jurisdiction over the parties involved is violated by an unauthorized removal of a child by a parent to another state, the state that issued the custody order may request another to extradite the person involved and honor the court decree. (When he is apprehended.) *Also, where such acts would constitute violations of state kidnapping laws, federal intervention could be sought under the fugitive felon act, 18 U.S.C. Section 1073.*"

This Act states: "Whoever moves or travels in interstate or foreign commerce with intent either 1) to avoid prosecution, or custody or confinement under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees. . . ." According to the FBI, "The fugitive must be wanted by local authorities for prosecution, or confinement after conviction, for a crime which is a felony. Local authorities must have information that the individual has fled interstate, request FBI assistance to locate him, and agree to extradite and prosecute upon apprehension."

In the case of Mrs. Starkey, California had done all it could to apprehend her ex-husband. In a letter dated April 9, 1973, from the Office of the Sheriff of the County of Los Angeles, it was stated again that a felony warrant charging Mrs. Starkey's husband with child-stealing had been placed in the NCIC and was still active. (This meant that if Mrs. Starkey's ex-husband should run a red light somewhere, he could be apprehended through the NCIC.) The letter also said, "At this point, we have reached the legal limits of our capabilities in this matter in terms of the physical apprehension of Mr. Starkey."

On June 16, 1972, a letter from the office of the Los Angeles District Attorney had brought this information: "This office is prepared to extradite and prosecute Daniel Riley Starkey when he is apprehended. Service of the warrant upon Daniel Riley Starkey is beyond the control of this office. . . ." This letter was written four months after the children were taken. The letter from the Sheriff's Office was written fourteen months after they had disappeared. And yet, this is the type of state responsibility that the Department of Justice insists that Mrs. Starkey and other custodial parents must accept.

On April 27, 1972, two months after the Starkey children were taken, the Office of the Los Angeles County Attorney requested a UFAP warrant from the U.S. Attorney in Los Angeles. This request was denied repeatedly on the grounds that Mrs. Starkey's ex-husband was the father of the children. Quoting a letter from then Assistant Attorney General Henry E. Petersen, on Dec. 12, 1972, we were again told, "It has long been the position of the Department of Justice that the Federal Bureau of Investigation will not conduct investigations under the Fugitive Felon Act in those cases involving the abduction of a minor child by a parent. This policy is based on the intent of Congress as expressed in the Federal kidnapping statute, which specifically excepts its application to the abduction of a minor by a parent. It therefore appears that this is a matter which is particularly the concern of state authorities."

And, on June 26, 1973, Assistant Attorney General Mike McKevitt had this to say. "Removal from Title 18, United States Code No. 1201 of the exception relating to the abduction of a minor child by a parent would thrust the Federal Bureau of Investigation into the middle of countless child custody cases and would place it in the untenable position of implementing orders of local courts. Should such a change in the Federal Kidnapping Statute be made, the Federal Government would be injected into matters more properly handled by the states and particularly, in most cases, by domestic relations courts."

We wonder at the FBI's untenable position when it enters and implements orders of local courts in other UFAP areas, such as fugitives who move in interstate commerce to avoid giving testimony or avoid service of contempt of court proceedings, etc.; 2,942 fugitives were located under UFAP warrants in 1972. In 1973, 3,156 were located. (These are figures from the FBI Reports and no classification breakdowns were listed.) How, even if feasible, would such domestic relations courts in California possibly motivate the law-enforcement agencies in New York?

And finally, Director Clarence M. Kelley, on November 29, 1973, has told us, "As you have been previously advised, the FBI is limited by statutory restrictions enacted by the Congress of the United States and, therefore, we are prevented

from conductng investigations in accordance with these laws." It is no longer policy, but statutory restrictions.

Where does a custodial parent turn when his or her children are taken? If there is much money, a private detective may be successful. For those of more modest means, this practice is often curtailed after a period of time when money runs out. Many states do not have child-stealing laws or reciprocal laws, many say that child-stealing is a misdemeanor, not even a felony. Some, as California, say it is unconstitutional to even say it is a felony! And the Department of Justice says that it will not assist under the one vehicle which will really help a state, the UFAP warrant.

What sentiment can prompt a publicly-financed department that should be cognizant of the needs of honest citizens as well as dishonest ones to state, "Traditionally, the individual states have borne the primary responsibility for providing for the health, welfare and domestic affairs of their citizens and dealing with local criminal matters." (LOCAL criminal matters . . . not matters that change when jurisdictions change). "In addition, the upgrading of the efficiency and effectiveness of local and state law enforcement agencies has been a prime objective of Congress, particularly in the past decade, as evidenced by the vast amounts of federal money that have been dispensed through LEAA to the states for training and equipping local police forces."

Yes. $699 million in 1972. And on page 219, of the 3rd annual report of LEAA, under Oklahoma Miscellaneous, instead of providing a law-enforcement personnel register including information on 2,835 law-enforcement personnel, perhaps it would have been better to spend the money on upgrading their philosophy, education, and salaries—and their investigatory powers. $465,000 of LEAA money went to Oklahoma in 1972, but no state law-enforcement officer ever found my two small grandchildren who were taken there in violation of California custody laws, Full Faith and Credit Clauses, notwithstanding.

"There is every indication that the desired improvement in state and local enforcement is being achieved. Thus, particularly, today, there is no indication that state and local authorities are unable to adequately deal with unexplained disappearances." Unexplained disappearances. Surely, custodial parents can all too clearly explain the disappearance of their children taken in violation of custody orders. "With the close liaison provided by the FBI, the use of its Laboratory and Identification Divisions, and its availability to check out-of-state leads upon request, we see little necessity for the FBI to become further involved in local law enforcement." The close liaison provided by the FBI. Liaison between the custodial parent and the child? The FBI and the kidnapping parent? The FBI and the custodial parent? There appears to be little liaison with the FBI when at every turn states and individuals are told that child-stealing is a state matter and the FBI cannot become involved. One wonders to what use the Laboratory and Identification Divisions is put when a kidnapping parent does not fall under the jurisdiction of the FBI and, often, cannot even be found. And surely, custodial parents need no assistance in identifying an ex-spouse. And one wonders at the availability of the FBI to check out of state leads upon request, when being told the nature of the cases.

If amending Title 18, Section 1201a, "would with little reason or justification cause the Federal Government generally, and the FBI particularly, to become involved in countless marital controversies, child custody . . . situations that are of primary concern to the states involved," we again wonder at the cold, bureaucratic indifference to the fact that once children are taken across state borders, the states from which they are taken are no longer in a position to apprehend them, and the states to which they may be taken, often do nothing or if they try, it takes many weeks or months with no assurance of success.

We feel that the accent should be put on the finding of children, not the punishment of parents. With the wealth of investigatory powers at its disposal, surely the FBI should be allowed to use them to help find such stolen children. Why should an organization that is so capable in other areas, such as the apprehension of criminals guilty of all kinds of crimes, be loath to find small, innocent citizens who need its protective powers.

Can we not as a nation, put emphasis not only on laws, but on justice. Families become emotionally, spiritually, physically, and financially depleted by the constant and tension-producing efforts to find their children. And the children, who knows to what trauma they are subjected when they are taken away? The 24 hour assumption of kidnapping surely could be instituted for children taken in

violation of custody orders. Or, at least, the FBI should be allowed to enter such cases at any time, if it is established that children have indeed been taken interstate.

Surely such Departmental indifference is inimical to all that our Government stands for in its humanitarian aspects. As important as fighting crime, pursuing Communists, and apprehending stolen slot-machines is, we affirm that children are more important than cattle and cars, and that as they are the future of their country, they deserve the highest protection that their government can provide.

MRS. BETH KURRUS,
Coordinator.

COUNTY OF LOS ANGELES,
OFFICE OF THE SHERIFF,
HALL OF JUSTICE,
Los Angeles, Calif., April 9, 1973.

MRS. BETH KURRUS,
Newhall, Calif.

DEAR MRS. KURRUS: Your letter dated April 1, 1973, has been received and referred to me for investigation.

A thorough review of the case file as well as conferences with Inspector Amiel and Captain Enger indicate that members of this Department have expended a great deal of effort in attempting to secure the return of your grandchildren. Leads provided by you in addition to those independently developed have been diligently pursued.

A felony warrant charging Daniel Riley Starkey with Child Stealing has been placed into the Nation Crime Information Center and is still active.

At this point, we have reached the legal limits of our capabilities in this matter in terms of the physical apprehension of Mr. Starkey.

Please be assured that this case is by no means closed and that this Department will investigate any workable information which will assist in locating David and Rachel.

Sincerely,

PETER J. PITCHESS,
Sheriff.
JOHN W. GRAHAM,
Chief, Patrol Division West.

COUNTY OF LOS ANGELES,
OFFICE OF THE DISTRICT ATTORNEY,
BUREAU OF CENTRAL OPERATIONS,
Los Angeles, Calif., June 16, 1972.

MRS. ANNA BILLINGS,
Newhall, Calif.

DEAR MRS. BILLINGS: This will acknowledge receipt of your recent letter to this office.

I have reviewed the matters that you refer to in your letter and have discussed them with Mr. Mayerson. Mr. Mayerson informs me that he has discussed the possible extradition of John Starkey with Mr. Wullschleger of this office, Sergeant Harand and Mr. Garbolino of Governor Reagans office. There is insufficient evidence to warrant the extradition of John Starkey.

This office is prepared to extradite and prosecute Daniel Riley Starkey when he is apprehended. Service of the warrant upon Daniel Riley Starkey is beyond the control of this office and I suggest that if you have any information as to his whereabouts, you relay this information to Sergeant Harand.

Very truly yours,

JOSEPH P. BUSCH,
District Attorney.
By SHELDON H. BROWN,
Acting Head, Complaint Division.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., November 29, 1973.

MRS. BETH KURRUS,
Newhall, Calif.

DEAR MRS. KURRUS: This is to acknowledge receipt of your letter dated November 22nd, with enclosures.

As you have been previously advised, the FBI is limited by statutory restrictions enacted by the Congress of the United States and, therefore, we are prevented from conducting investigations in accordance with these laws. Section 1201(a), United States Code, Title 18 deals with the principal violation of kidnapping except in the case of a minor by a parent thereof.

In view of this exception, I regret that the FBI cannot be of service in this instance.

Sincerely yours,

CLARENCE M. KELLEY, *Director.*

Federal Law pertaining to abduction and kidnapping, or the administration thereof, needs revision. Far too many people, law abiding citizens, are being permitted to live through month after month of unending anguish coupled with unbelievable frustration as a result of current inadequacies in the law.

Although our case is far from unique, it certainly provides good background.

On the weekend of August 17, 1972 my former husband, Edward John Duggan Jr. and his second wife, Helen Andrews Duggan abducted seven children. Five of those children were the product of my marriage to Mr. Duggan. The courts had awarded me custody of the children at the time of our divorce. The grounds were clear cut—desertion. The two remaining children were the product of the current Mrs. Duggan's previous marriage to Dennis Wilburn, which had also ended in divorce. The conditions surrounding that divorce were such that Mr. Wilburn had been awarded custody of their two children.

At the time of the abduction my husband and I contacted local law enforcement officials and did precisely as they directed. Criminal warrants were sworn out for Mr. and Mrs. Duggan both by Mr. Wilburn and myself. At the same time, since the circumstances clearly indicated that the nine missing people were out of the State if not already out of the country, extradition was requested from, and authorized by local authorities.

After six months of fruitless investigation, Captain Wiltshire, head of the detective bureau of the Henrico County Police Department stated to us that our "only hope" was to get the FBI to investigate. "Failing that", he said we might consider employing private detectives which "could be expensive" and might very well lead to nothing.

Numerous contacts with the FBI had already proved useless. Thus we retained Simmons and Powell, a Richmond based investigative law firm of impeccable reputation. They had been highly recommended both by our attorneys and local law enforcement officials. In these endorsements it was pointed out that between Simmons and Powell there were twenty five years of FBI experience and that this connection, "if needed", might be of help in obtaining FBI assistance.

Although Simmons and Powell initially felt they could solve the case, after six months of intensive investigation they too stated that our only hope was to press for FBI assistance.

My husband first requested and then pushed for a personal interview with Mr. Kelly, at that time acting head of the FBI. Such an interview was flatly refused. It was stated however that he could contact a Mr. David Bowers "who was high up in the Bureau, if he thought it would do any good." The implication was clear that it would not.

In an extended long distance telephone conversation with Mr. Bowers my husband made two points:

1. The fact that the children had not contacted us since their abduction was not sufficient grounds to believe that they were happy where they were. In fact, based on our relationship with the children it would more clearly indicate

that they were either being held incommunicado or that some harm had befallen them. To put it frankly, because of the vindictiveness previously shown by Mr. Duggan we believe he is motivated by revenge and we do fear for the children's lives.

2. Federal Law if not necessarily as stated, certainly as interpreted protects Mr. Duggan and his current wife who obviously have acted in contempt of a court order and in the absence of Federal intervention have left us without recourse. Thus we were not being afforded equal protection under the law which we have always believed to be a constitutional right.

Mr. Bowers agreed that my husband "had a point" and suggested that we contact the Department of Justice. This we did.

Once again after extended frustration the result was a grand jury investigation which is currently in session. This investigation however is a somewhat hollow victory. The presiding judge in his instructions to the jury encouraged them to utilize their investigatory powers to the utmost for it was entirely possible that even if indictments were handed down it could well be that the FBI would refuse to act on them. Thus, he stated, any information the jury was able to obtain might prove helpful to local and private investigators who were currently stymied.

Based on the above, It is our position that there is reasonable cause to believe that Ed and Helen Duggan have committed a felony and that there is strong possibility that the children are in danger. We support this position on the basis of local law enforcement and judiciary officials agreeing to the swearing out of felony warrants, authorizing extradition and calling for a Grand Jury investigation.

It is also our contention that we have exhausted all local law enforcement and judiciary possibilities available to us. We support this contention on the basis that both governmental and private investigative groups associated with this case have openly stated that our only hope was an FBI investigation, and that local authorities have already agreed to swear out criminal flight warrants in an effort to help us obtain it.

Unfortunately the FBI is adamant in its refusal to intervene in the case.

If in fact existing Federal Statutes do not afford any protection for people in a position such as ours then in simple fairness the law should be revised. On the other hand if the elastic provisions of the Constitution permit the FBI to "presume" interstate activity and involve themselves in such things as recovering stolen cattle and protecting Smokey the Bear's emblem then their oft repeated excuse that they do not have jurisdiction is simply an administrative facade.

In all of our contacts with the FBI we have yet to hear a good argument as to why they should not become involved in cases such as ours where probable cause exists and where all legal channels available have been exhausted.

Mr. Kenny, in his testimony stated "there is no indication that local authorities are not capable of handling missing persons cases". This is a blatantly untrue statement. All you need do is refer to the host of cases similar to that of Karen Levy. Time after time local authorities have not only done too little too late but also have through mishandling set yet another stumbling block in the path of justice. This statement is in no way a blanket indictment of local police groups. Instead it is simple recognition of the fact that they are not equipped to handle this type of case. As a matter of fact they are the first to say so.

Another FBI argument is: "There are too many cases. If we got involved we'd do nothing else." To us, this simply proves that those who would break the law have found the loophole.

Still another argument is: "Most cases solve themselves." Many do. But what about those that don't. One classic case took fifteen years to "solve itself". Many others are yet unsolved.

In summation it is our belief that the law as stated and backed up by the "flight to avoid prosecution" provision *could* be sufficient to handle cases such as ours. The criteria for FBI investigatory intervention would be whether in the eyes of those locally responsible there was probable cause to believe a felonious act had been committed and if the aggrieved parties had exhausted all local resources. With this approach the case load would not be overwhelming.

On the other hand if the FBI, as Mr. William S. Cohen so aptly put it, is adamant in its refusal to become involved because they invoke a "rule of thumb

rather than a rule of reason", then the only effective recourse you have is to revise the law and force the Bureau to act.

Please remember we are not simply statistics. We are living, breathing human beings who are enduring an unbelievable hell on earth. But you can help us.

Sincerely.

SYBEL D. CRONE,
By GLENN P. CRONE.

LONG BEACH, CALIF., *March 4, 1974.*

Hon. JOHN CONYERS, Jr.,
Chairman of Subcommittee on Crime, House of Representatives,
Washington, D.C.

DEAR MR. CONYERS: Although I didn't have the chance to speak before your Subcommittee in support of H.R. 4191, I'm pleased to know that my written statement will be testimony for it in the Congressional Record.

I will briefly review my case for the purpose of showing cause for H.R. 4191, and to bring to your attention what the problems are when minor children are taken out of the United States in violation of Court Orders, and to suggest some measures for preventing this problem.

On Dec. 11, 1971, I made the horrible discovery that my two small sons, (of whom I have custody) were taken by their father to Caracas, Venezuela. I called the American Embassy thinking they could help me, but as soon as he learned through them that I knew where he was, he disappeared.

The next 25 heartbreaking months were filled with frustrations that included being taken by crooked detectives, countless letters and phone calls to Senators and Congressmen, and even consultations with psychics. Also the District Attorney did not make a Felony Complaint against my ex-husband until a year and a half later when I made a citizen's complaint on the inaction taken on my case.

Although clues finally established that he was in Buenos Aires, Argentina, the police explained to me that they did not have the authority to demand the information from his union on where his retirement check was being sent. One doesn't realize how ineffective the child custody laws are until they try to get help in finding their stolen children! With the FBI's help I could have gotten his address immediately.

I was extremely lucky in getting the children back in Jan. of 1974, but it was a very tricky situation. I was advised not to go through the courts of a South American Country, so I hired the services of a man who is experienced in getting children out of South American Countries in this kind of situation. We had some very nervous moments when it looked like we would not succeed, and although we did, it was not easy.

In South American Countries, mothers traveling alone with their children are required to have a note of legalized permission from the father or from a special Children's Bureau, even if they have custody of their children. This is not required of fathers, because they have the paternal powers to leave the country with their children at will. This also applies to United States Citizens in South America. With a bit of deception we were able to get this paper. If my ex-husband had been alerted, or if I had gone to a judge, I probably would never have been able to bring them back to the United States with me.

On the strength of my felony complaint, we were able to interest the Bariloche Police in helping us. Although they held my ex-husband for 48 hours while we crossed over the border to Chile, they almost reversed their decision the last minute when they learned that he had registered the children under his name with a lawyer in Buenos Aires. If I hadn't had enough money on me to keep me from reversing their decision, my children would still be in Argentina. No United States citizen should have to go through this.

My case is not rare. In the beginning when I talked to the State Dept. official in Los Angeles of my plight, he mentioned that during his 17 years on the job he had received about 100 phone calls just like mine! Keep in mind that this is just in the Los Angeles area. Also in an article about Congress in the '73 Feb. issue of "Saturday Review of The Society", on page 53 it mentions that one of the most common letters Congressman receive is about child stealing. "A divorced woman discovers her children have been "Kidnapped" by their father and removed to another state or country".

I think that the time is long overdue that our Government made it more difficult for minor children to be taken out of the United States. If I may make a suggestion, I think this all too frequent occurence would be prevented if the Courts would inform the Passport Office at the beginning of all divorce proceedings, that permission for passports on children under court orders must be obtained through the Court. This would eliminate chances for trickery. In this computer age, this would be a simple solution for a most heartbreaking problem.

In most divorces both parents have legal custody with one parent having physical custody, and the other having visitation rights. It states on the divorce decree that permission to take the children beyond a certain area must be gotten by obtaining written permission from the other party or by order of the Court. Unless this can be enforced at immigration level, it's not worth the paper it is written on!

I strongly urge support for H.R. 4191 so that custodial parents may have FBI assistance in finding their stolen children.

I also strongly urge that a bill be written to provide effective regulations on issuing passports for children under Court Orders. Our children need to be protected from being absconded from their United States homeland.

Most sincerely,

BERNETTE DER PAULIAN.

[Taken from the investigative report prepared by Britton Associates for Mr. and Mrs. Bertram E. Levy]

Re: Our File #US–558, Karen Merle Levy.
Case conference: Federal Bureau of Investigation, Syracuse, N.Y.

Syracuse, N.Y., Monday, 11/13/72, 10:00 a.m.

This date agents JJB & ICS personally met with Mr. William Quackenbush (ARA) and Richard Dorton (SA), Federal Building, Syracuse, N.Y., 13201, (315) 422–0141.

All information developed during the course of the investigation conducted by this agency from Sunday, 11/13/72, thru Monday night, 11/13/72, was discussed in detail with Messrs. Quackenbush and Dorton who made extensive notes and photocopied portions of our file.

Mr. Quackenbush personally met with Mr. James M. Sullivan, Jr., United States Attorney for the Northern District of New York, at his office in the Federal Building, for the purpose of determining whether or not the FBI could officially enter the case.

Following this meeting, Mr. Quackenbush advised us that while he, personally, concurred with our view that Karen has undoubtedly been abducted or kidnapped, it was the opinion of Mr. Sullivan that the evidence thus far developed, was insufficient to warrant Federal intervention in the case at this point, principally because Karen had voluntarily acompanied "Lacey" and there was no evidence that she had been forced or coerced into taking the proposed "ride" with him. Mr. Quackenbush advised that; otherwise, in the absence of a ransom demand or other evidence that a Federal Statute had been violated, the FBI could not, at least for the present, officially enter the case.

Mr. Quackenbush contacted the FBI SAC in Albany, N.Y., and received instructions to set up a "Missing Persons" file on Karen.

Mr. Quackenbush also ran a c/r and local name check on William and Bill Lacey; however, the results were negative.

Mr. Quackenbush further advised us that if we came up with any new evidence which might indicate that Karen is being detained anywhere against her will or has met with foul play, we should notify him immediately and he will again see the U.S. Attorney for permission to enter the case.

Finally, Mr. Quackenbush advised that the FBI SAC in Newark, N.J., had set up a file on Karen's disappearance and we should direct any information picked up in New Jersey to that office.

Mr. Quackenbush further assured us the FBI would cooperate and assist us in any way possible short of officially entering the case.

J. J. BEGLEY.
I. C. SATOW.

[The following material was provided by: Citizens' Committee to Amend Title 18, Sec. 1201A, of the U.S. Code, Newhall, Calif.]

CHILDREN ARE MORE IMPORTANT THAN CATTLE AND CARS

Did you know that if children are taken across state lines in violation of custody orders, that the kidnapping parent is protected by a federal statute, but the custodial parent has only the state, and the FBI turns a deaf ear? But the FBI will enter the jurisdiction of 185 "things", such as stolen cars, stolen cattle, illegal transportation of gambling devices, wagering information, wagering paraphernalia, interstate travel in aid of racketeering enterprises, illegal changing of phonograph labels, switchblade knives, impersonation of an employee of the U.S. Government, illegal wearing of a uniform of the Armed Forces, or the illegal use of "Smokey the Bear" emblem! But, it refuses to aid a custodial parent whose CHILDREN have been taken across state lines in violation of custody orders. Also, it refuses to aid local and state law-enforcement agencies who cannot go beyond their jurisdictions and who are not always privy to information which can aid in the apprehension of the children. And, finally, it will not assist to honor UFAP (Unlawful Flight to Avoid Prosecution) warrants which are requested by state authorities to help apprehend kidnapping parents. There is a new committee dedicated to the amendment of the unfair statute which the Department of Justice uses as its reason for prohibiting the FBI from entering the heartbreaking and often traumatic cases of children taken out of the state in violation of custody orders. This committee is THE CITIZENS' COMMITTEE TO AMEND TITLE 18, SECTION 1201a, OF THE U.S. CODE. For further information, please contact Mrs. Beth Kurrus, P.O. Box 936, Newhall, California, 91321. Thank you.

Section 1201a, Title 18, U.S. Code:

"Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward or otherwise, *except in the case of a minor, by a parent thereof*, shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed."

Recommended amendment to Title 18, Section 1201a:

Transportation with the Purpose of Detention, Concealment, or Removal of Child in Violation of Custody Orders:

(a) Every person who has actual physical control of a child for a limited period of time in the exercise of the right to visit with, or to be visited by, such child, or the right to limited custody of such child, pursuant to an order, judgment or decree of any court, which order, judgment or decree grants custody of such child to another, and who, without good cause and with intent to detain or conceal such child after the expiration of such period, transports said child in interstate or foreign commerce without the consent of the person or persons entitled to custody of such child, violates this section.

(b) Every person who has custody of a child pursuant to an order, judgment or decree of any court, which order, judgment or decree grants another person limited rights to custody of such child or the right to visit with, or to be visited by, such child, and who transports said child in interstate or foreign commerce with the intent to conceal such child without good cause and with intent to deprive such other person of such right of limited custody or visitation, violates this section.

(c) In any case in which a parent of a child has, pursuant to an order, judgment or decree of any court, a right of custody to the child equal to that of the other parent or, pursuant to an order, judgment or decree of any court, has no right of custody to the child, and removes the child without the consent of the other parent, from the place where the child is then residing or staying and, by transporting the child in interstate or foreign commerce, conceals the child from such other parent without good cause and with intent to prevent the other parent from exercising rights of custody to the child, he violates this section.

(d) Every person who violates this section shall be punished by imprisonment for any term of years.

(e) The failure to return the child after the expiration of the period of visitation or limited custody in the case of subsection (a), or within twenty-four hours after the child has been taken or concealed in the case of subsection (b) or (c), shall create a rebuttable presumption that such child has been transported in interstate or foreign commerce.

(f) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (d).

$500 REWARD

DAVID SHAWN STARKEY

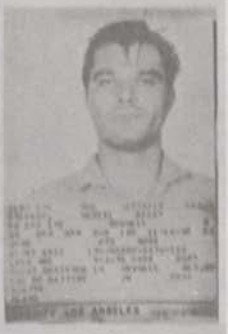
Five Years Old

Brown Hair Blue Eyes

Ready Smile

RACHEL ANNE STARKEY

Three Years 8 Months Old. Light Hair. Blue eyes. Two upper front teeth angle toward each other.



DANIEL RILEY STARKEY

May be using name Clifford Smith, Dan Stark or Dan Starr. Age 31. Dark brown hair. Blue eyes. Ht. 5 ft. 10 in., wt. 180 lbs. Social Security No. [redacted]

ROSABELLE LONDON SIPES

May be using name Rose, Smith or Starkey. 58 years old. Ht. 5 ft. 5 inches. Red (or bleached) hair. Green eyes. Ex-bar owner. Social Security No. [redacted]

Reward is offered for information resulting in the recovery of the two children, who were taken from their Mother's home in Newhall, Calif., on February 12, 1972 by Daniel Starkey, in violation of custody orders.

There is a felony warrant in California for Daniel Starkey on a child-stealing charge. There is a felony warrant in California for John Starkey on a conspiracy charge in connection with the child-stealing charge. The children could be found with any of these adults. Rosabelle Sipes drives a 1969 grey Toyota, 1972 California license no. XQF 309. John and Ruth Starkey drive a 1964 blue and white Chevrolet pick-up with white camper, 1972 Oklahoma license no. 587-749. They are believed to be somewhere in Oklahoma. Last seen in Sapulpa, Oklahoma.

Anyone having information on any of these people should contact the Oklahoma Bureau of Investigation, Oklahoma City, phone Collect (405) 946-5061, and they will contact the persons offering the reward; or, Detective-Sergeant Harand, Newhall, California Sheriff's Department Phone (805) 255-1121.

JOHN & RUTH STARKEY

John Starkey is medium height and build. Brown hair, blue eyes. About 30 years old.

Ruth Starkey is medium height and build. Dark hair and brown eyes. About 48 years old.

FEBRUARY 14, 1973.

DEAR BETH: After I made the horrible discovery that my two small children, of whom I have custody, were taken by their father to South America, I asked some questions about passport procedures for children.

I will quote from two letters on this subject. The first is from W. E. Duggan, Chief of the Legal Division of the Passport Office. "The Passport Office assumes that each parent has equal custody over minor children." He goes on to explain that they will proceed as usual unless the parent with custody writes to them and explains that they are not giving consent for passports.

The 2nd letter is from Colgate S. Prentice, Acting Assistant Secretary for Congressional Relations. "As a general rule a passport application filed by a parent, legal guardian or person acting in loco parentis on behalf of a minor child is presumed to have the approval of the minor's legal custodian. Those occasions in which a child travels abroad without parental consent are rare."

I believe this last statement to be most naive. When I talked to the State Dept. official in Los Angeles of my plight, he mentioned that during his 17 years on the job he has received about 100 phone calls just like mine! These calls were mostly from mothers and he only knew of a handful who had gotten their children back. Keep in mind that these 100 phone calls were just from the Los Angeles area.

In an article about Congress in the Feb. issue of "Saturday Review of The Society," on page 53 it mentions that one of the most common letters Congressmen receive is about child stealing. "A divorced woman discovers her children have been 'kidnaped' by their father and removed to another state or country."

Of interest, in South America only the men have custody, and a mother traveling alone with her children is checked at immigration level for a legalized note of permission from her husband. In Canada a single parent applying for a child's passport is required to have legalized permission from the other parent, or proof of sole custody. I think the United States should follow suit. Immigration laws should support domestic court custody laws, or the court laws aren't worth the paper they are written on.

I hope this information will shock enough people into demanding laws that will protect the rights of children in this country. Not only protection from being absconded from their rightful home, but also from their homeland.

Most sincerely,

BERNETTE DER PAULIAN.

[From The (Newhall, Calif.) Signal, June 27, 1973]

LONG SEARCH ENDS—ABDUCTED CHILDREN BROUGHT HOME

More than a year of searching and waiting has ended for Vickie Ann Starkey.

The 24-year-old Newhall woman has recovered her two children, abducted in February, 1972 by her ex-husband. Daniel Starkey and the two children disappeared without a trace. After more than a year of searching, the fugitive father was finally tracked down.

"It came right out of the blue," Mrs. Starkey said Monday. "He was in Texas with the children."

Someone had tipped local police to Starkey's whereabouts. Mrs. Starkey was in Oklahoma at the time, still searching for her son David, 5 and daughter Rachel, 4.

Now, the mother and her two children are reunited. "It's good to be a mother again," Mrs. Starkey said. "Sometimes, it's like they were never gone."

"But there's a big gap. David's still very meditative," she explained. "I find him often deep in thought. I don't try to ask him about it—it will all come out in time."

The two youngsters stay close to their mother.

"David and Rachel are very possessive. They don't want to let me out of their sight."

Although she knows little of the children's life while they were gone, she has begun to learn bits and pieces about their experience. "David says they were always camping out, always packing up and moving."

"I think they like staying settled for once."

For the children's grandmother, Beth Kurrus, 21515 Placerita Cyn. Road, the homecoming has been the culmination of a long campaign. "It was like a miracle that they were found. This is something we've hoped and prayed for."

She noticed a definite change in the youngsters. "They're so much more grown up. You can tell they've been through a lot of upset."

After months of fruitless police attempts to find the children, Mrs. Kurrus became convinced that only the FBI could help her.

She mounted a full-scale campaign to change child-stealing statutes which prevent FBI intervention in such cases. Kidnapping by a parent in violation of custody orders is not a federal offense.

Mrs. Kurrus collected thousands of petition signatures calling for a change in the law. Her story has appeared in newspapers and on television.

She has corresponded with dozens of legislators, district attorneys, police officials and others.

Chapters of her "Committee to Amend Title 18" (of the U.S. Code) have sprung up as far away as Richmond, Virginia.

As a result of the big stir, Congress is now considering four bills which could mean a change in the law. "We're pinning out hopes on a particular bill in the House of Representatives. It's the strongest one of all."

Although her grandchildren are back, she is more determined than ever to see the fight through, Mrs. Kurrus said.

"There are so many other women who have lost their children this way," she said. "I can't back out now."

[From the Houston Chronicle, Feb. 11, 1973]

STRICKEN MOTHER CRIES FOR BABIES TAKEN BY MATE

(By M. M. Patterson, Chronicle Staff)

A Houston mother lies in a hospital bed and cries for her two babies taken from her to Venezuela five months ago by her estranged husband.

The mother, Mrs. Janice Fernandez, 29, an American citizen, currently is recovering from a cancer operation.

She won legal custody of Jeana Marie, 3, and Jeremy Simon, 1, last June. Her husband, Jose Simon Fernandez, a Venezuela citizen from whom she is legally separated, took the children on visitation last Sept. 1.

The next day, she got a telephone call from him in Caracas, Venezuela. "He told me he had the children and I would never see them again," she says.

"It's been terrible," she says. "Nobody wants to get involved. Nothing has happened."

Mrs. Fernandez says she sought aid from the U.S. Department of State, the American embassy in Caracas, the FBI, two lawyers here and one in Caracas, as well as the Venezuelan consulate here.

The State Department told her the matter was not in its jurisdiction.

A spokesman says disputes between parents in child custody cases should be settled "in a court of the country where the children are."

Mrs. Fernandez says the American embassy in Caracas also told her it had no authority.

William F. Beane of the FBI here says the federal kidnaping law does not apply to parents abducting their own children.

Mrs. Fernandez says here lawyers have failed so far to start legal action to regain her children.

Her lawyers are Louis Andrews and Hector Azios.

Domestic Relations Judge Benjamin Woodal, who granted the Fernandezes' legal separation last June and gave her custody of the children, says the father could be held in contempt of court.

"But as a practical matter, how could I enforce that?" Judge Woodall asks.

The court ordered Fernandez to pay $200 a month child support. Mrs. Fernandez says her husband has not paid a cent.

She says she earns a modest living as part owner of the Tropical Lounge on Lawndale and Telephone. "I can support my family," she says.

Mrs. Fernandez says she has spent $800 on long distance telephone calls, most of them to Caracas to try to find her husband, and has paid her attorney, Andrews, $100.

Andrews says $400 of his fee has gone for long distance phone calls.

Dr. Raynaldo Leandro, the Venezuelan consul in Houston, recommended a lawyer in Caracas. Mrs. Fernandez says she and her Houston attorneys hired one.

"'We sent him all the certified documents and we've been waiting weeks for him to send a power of attorney for Mrs. Fernandez to sign," Andrews says.

"All we've been doing is talking for more than three months," Andrews says.

Hector Azios, her other local attorney, says he believes political pressure from Fernandez may be causing the stalling. Mrs. Fernandez says her husband, from a well-to-do Venezuelan family, has a brother who is an attorney in Caracas.

Meanwhile, Fernandez has filed a suit for divorce in a Venezuelan court charging Mrs. Fernandez with abandonment, Andrews says.

The Venezuelan consul said it is important for Mrs. Fernandez to bring her side of the case before the Venezuelan court quickly.

Her surgery and hospital bills have eaten up most of the $900 she had saved for a trip to Caracas.

"There should be some governmental body that can help our citizens get their rights," Andrews says. "Mrs. Fernandez is trying to do what's legal; meanwhile she's suffering and there's no remedy in sight."

[From San Fernando Valley "Living"]

NEWHALL MOTHER'S PLEA IS "HELP FIND MY MISSING CHILDREN"

Two birthdays and a joyless Christmas have passed since Mrs. Vicki Anne Starkey of Newhall has seen her children.

It's been 13 months since the 24-year-old brunette last dressed and hugged her son David and daughter Rachel and waved good-by to them as they left hand-in-hand with their father Daniel to spend a day at the zoo.

David was four and Rachel was three. They were to spend the day with "daddy," who was divorced from "mommy" and no longer lived at home.

As exciting as a visit with the zoo animals seemed, even more thrilling would be the homecoming, when they could show their balloons and interrupt each other with exaggerated tales of their outing.

But there was no homecoming.

The hands of the clock ticked slowly past 5 p.m., the pre-arranged time for the youngsters' return. Then 6, then 7. Then terror set in.

Mrs. Starkey's heart knew what her mind would not accept. Her children had been kidnapped by their father.

Through the anguish of the days that followed, warrants were issued for Daniel Starkey's arrest and law enforcement agencies traced his flight from California to New River, Ariz., and to Okmulgee, Okla., the former family home. Then he and the children could no longer be traced.

It was at this point that Vicki's mother Mrs. Beth Kurrus, a French teacher at Placerita Junior High School, felt her grief harden into an ironclad determination to bring about amendment of the federal kidnapping statute, better known as the Lindbergh Law.

"We've gone through the tears, the turmoil, the aching sense of loss and the fruitless efforts to get help," she says.

"We've appealed to law enforcement officials from the local level through to the White House. We've made a personal journey back to Oklahoma on summer vacation to attempt to find the youngsters. We've even hired a private detective, all to no avail. It's as if the children and their father had dropped off the face of the earth."

Mrs. Kurrus is finished now with the tears. The cold ache of grief for her grandchildren, her daughter, all women whose youngsters have been taken from their custody, has been fired into a single, unyielding day-through-night drive to cure an inequity which to her is reprehensible.

"Do you know that if children are taken across state lines in violation of custody orders, that the kidnapping parents protected by a federal statute, but the custodial parent is helped only by the state?" she asks, her eyes flashing fire.

"And do you know that the FBI, which turns a deaf ear to these kinds of 'kidnappings' across the country, will enter into jurisdiction if stolen cars and stolen cattle are taken across the state lines?"

Also, she says, the FBI refuses to aid local and state law enforcement agencies who cannot go beyond their jurisdictions and will not assist to honor Unlawful Flight to Avoid Prosecution warrants which are requested by state authorities to help apprehend kidnapping parents.

Mrs. Kurrus, the grieving grandmother, has become Beth Kurrus, avenging angel, and all her disappointments and deadend roads to date leave her undaunted.

She's organized and is spearheading a Citizens' Committee to Amend Title 18, Section 1201a of the U.S. Code.

Interpreted, there are 11 words which prevent the Lindbergh Law from applying to those who take children out of the state in violation of custody orders.

In essence, Title 18, Section 1201a of the federal code states that whoever kidnaps a child, takes it across state lines and conceals it, is guilty of a felony and can be punished by death or imprisonment.

"Anyone," Mrs. Kurrus emphasizes, "except the parent of this child. In this case, the FBI will not enter to apprehend the parent and return the child to the parent who has legal custody.

"The 11 words that are used to keep the FBI from giving assistance are those that were amended into the Title 18, Section 1201a statute in 1934; 'Except in the case of a minor, by a parent thereof.'"

Mrs. Kurrus' petition for the amendment would make provision for federal assistance effecting return of a child to the custodial parent.

Since word of her one-woman campaign has been spread through her speaking engagements before clubs and civic organizations, more than 500 copies of the petition have been mailed throughout 17 states.

"Women in the same plight have written to me. Their grief at the loss of their children only reinforces my determination to see justice done," Mrs. Kurrus emphasizes.

She describes her efforts to get legal help over the past year, since the date of her grandchildrens' disappearance Feb. 12, 1972, as a "round robin shifting of responsibility."

"The sheriff's office says it is the problem of the district attorney's office. The district attorney's office tells me it is the jurisdiction of the sheriff's department.

"When my former son-in-law's father was jailed in Oklahoma on a conspiracy warrant, California authorities would not extradite him. Officials kept saying there was no basis for conviction, but they had put out the criminal warrant for his arrest in the first place.

"Now Oklahoma authorities say it's California's problem and vice versa."

Mrs. Kurrus has a scrapbook of correspondence with the White House, FBI Chief L. Patrick Gray, Oklahoma authorities, California Gov. Ronald Reagan and State Sen. Alan Cranston.

The response is always the same, she says, "We regret we cannot help you under the current federal statute."

Mrs. Kurrus' daughter has gone back to work in an attempt to alleviate her grief and to fill empty days. Neither have had any communication by mail or telephone since the children disappeared.

"Our packages to them at the last addresses we had for family members come back unopened and mail is returned.

"My daughter's former husband keeps changing his name and his place of residence and since the children do not yet go to school, he is able to continue this pattern of flight," she says.

Posters have been placed throughout Oklahoma and a reward has been offered.

There is a felony warrant out in California for Daniel Starkey, on a child-stealing charge and one for his father John Starkey on the conspiracy charge. This, apparently is all that can be done until the federal statute is amended and the FBI can legally enter the case.

"I've collected letters from women all over the country. One woman's children were taken to South America by her husband. Another woman committed suicide after her children were taken. The heartbreaking stories pour forth and the constant cry in all of them is 'nothing is being done to help.'

"The only hope we have to date is that the childrens' father will run afoul of the law somewhere in Oklahoma and be held on the California warrant. Then would come the problem of having him extradited and again we would be told there was 'no basis for conviction.'"

And so Mrs. Kurrus goes on, fighting her one-woman, seemingly ineffectual battle for justice for custodial parents. She writes letters, speaks, calls authorities repeatedly, mails out petitions, sends out correspondence, prays, waits and hopes.

"Women have been able to effect changes in inequalities in the past," she explains. "But it takes women in great numbers."

Mrs. Kurrus has petitions available for signature. They may be secured by writing to her at Post Office Box 936, Newhall, Cal. 91321.

While she waits for enough women to reinforce her plea, the days endlessly slip by for her daughter and for other mothers whose children have been illegally taken from them.

"Only a mother who has been through this travail, whose heart skips a beat when she hears a child cry 'Mommy,' who is surrounded by neglected teddy bears and toys can know the anguish we live with," Mrs. Kurrus appeals.

"An endless year has gone by. Time is running out.

"Help us."

CHILD THEFT

My husband took our two young children, and I think he has gone to Guam. I've contacted the police, the prosecutor and others but they all tell me there is nothing they can do since they were taken by their father and that isn't considered kidnapping. How can I get my children back? They need their mother. Mrs. P.D., Long Beach.

It is very unlikely the government would step in to help you get your children back, according to spoksmen for the Long Beach branch of the district attorney's office and for the Federal Bureau of Investigation in Los Angeles. They both told ACTION LINE their offices rarely get involved in cases such as yours—where the married parents equally share custody—or even where one parent has sole custody. They feel the problem is usually a domestic one best handled in civil not criminal court. Your best bet, the district attorney spokesman suggested, is to try to work out an agreeable custody arrangement with your husband. A citizens group, headed by Mrs. Beth Kurras, is working to have the federal kidnapping statute amended to cover child-stealing, a case where one parent takes the children from the other parent in violation of a court-imposed custody order. Her group is urging Sen. Alan Cranston to introduce such legislation in Congress. Mrs. Kurras' group hopes if that law is amended, the FBI would be available for help in locating and returning stolen children. You can get additional information on this proposed amendment by writing Mrs. Kurras, P.O. Box 936, Newhall, Calif. 91321.

APRIL 20, 1973.

To Whom It May Concern:

Last August 18, 1972, my former wife Helen Andrews Duggan called for my two children. Dennis John Wilburn and Merry Melissa Wilburn were in my permanent custody (Per court order). Mrs. Duggan had limited visitation rights. The day before, August 17, 1972, Edward John Duggan, Jr., called for the children born of his previous marriage, they numbering five. Sometime after five P.M. on the 18th of August 1972 all nine persons vanished. To date we have had little police action in this "Domestic Situation". How kind of everyone to call this domestic; however, if they the Duggans had stolen a car, a cow or horse etc., they would have been hunted down. It is time the parent who has fought and been found to be in charge of the child or children of a broken marriage be given equal protection under the law. Does no one care for the feelings of the child or children involved? Will no one in this country find it in their hearts to help?

Look in on your child or children tonight . . . Picture us, we look on an empty bed, we see toys not played with and classmates come to call wanting to know if we know anything yet.

Our children are able to call or write, yet nothing for over eight months. . . . Are they alive? Are they being cared for? Are they being mistreated? For months now this has gone on in the mind of my family here at home. We have cried, prayed, begged and written letters. Please help to help the children torn away from their homes. Thank you for any help that you can give. I might add here that my ex-wife (2 years ago) told my then 8-year-old daughter on one of her visits to give her baby step-sister something to choke on when no one was looking. This woman has seven children who the authorities want to call a "domestic situation".

It is time the American Public called out and demanded the right thing be done. . . .

Sincerely,

DENNIS J. WILBURN.

[From Life Style, Long Beach, Calif., Sept. 16, 1973]

Child Stealing Ignored Crime, Parents Fume

(By Patricia Quinn, Staff Writer)

Ask Regeina Samuels about California's child stealing provisions and her response will fluctuate between sadness and anger. Her 5-year-old daughter, Leslie, was taken about 11 months ago by the child's divorced father and Mrs. Samuels hasn't seen her since.

Or ask Kenneth Dean, an employee at McDonnell-Douglass whose ex-wife disappeared with their youngest son, Mark, now 12, about 17 months ago. The oldest son Richard, 17, is still at home with his father, who had court-appointed custody of the two boys, simply because he pretended to be ill when his mother exercised her visitation rights on this particular weekend.

The five frustrating hours Dean initially spent revolving through the police department trying to get someone to take his complaint left him near tears. "All the time she was getting farther and farther away."

And then if Bernette Der Paulian of Long Beach is asked, her response would encompass more territory than the other two. Mrs. Der Paulian's ex-husband fled to South America with their two sons, now aged 5 and 8 years, two full years ago and Mrs. Der Paulian has been searching ever since—and trying to change U.S. Passport Office regulations as future prevention.

Place this same question before various police and legal officials and their answers can demonstrate a laissez faire attitude backing what some would suggest is deliberate machinery slow-down.

Child stealing is generally classified as a misdemeanor, can be upped to a felony offense, but is usually regarded as a domestic situation which many officials seem reluctant to become involved in.

Mrs. Samuels, a Bellflower resident and the others, plus many more parents with similar problems are actively seeking ways to put power into those laws dealing with the abduction of a child by his other parent, usually the one left without custody after a divorce action.

Present laws, in the opinion of these people, are virtually ineffective and need to be changed.

Mrs. Samuels and others, most notably Beth Kurrus, a Newhall woman who instituted a citizens committee last year after her daughter's children were taken, have circulated endless petitions, written numerous letters to legislators, attacked the issue from all angles, including the independent and expensive hiring of private detectives, and for the Samuels at least, even consulted mystics. All in a sometimes desperate attempt to get back the children the courts placed in their hands.

"We'll try anything," declared Norman Samuels, Mrs. Samuels' second husband, an aerospace engineer who works closely with her to find Leslie.

"He (Richard Low, the father now wanted for a possible felony violation for removing the child across state lines) has completely disappeared."

Samuels insists law enforcement of this issue is so inadequate it promotes the idea of stealing a child back from the parent who first did the stealing. "The law is so weak," he says, "that if we do get Leslie back, we won't want him to visit with the child for fear he would steal her again. For that reason, we could even consider stealing her ourselves so that he couldn't find her.

"We wouldn't do it," he insists, "but we think of it."

In the case of Leslie Low, the father sold his car, house and quit his job, even neglecting to pick up his last paycheck. He came, according to the Samuels, after seven months without seeing the child, to visit with her for the weekend. That was on September 22, 1972. He never returned.

On the 24th, the day Leslie was supposed to be returned, the Samuelses contacted the police. The couple now angrily claims that the county sheriff's office waited two weeks before taking action.

"By that time and today's travel, a person could be anywhere," Samuels heatedly declares.

They are not the only parents with such complaints about official action, Samuels maintains. "The circumstances vary but invaribly all the parents we talked to—and it's not always the mother, by the way, some fathers are in the

same position—all find little cooperation from the police departments. It seems they mess around following up leads until it's too late!"

Mrs. Kurrus, whose grandchildren, after a 16-month disappearance, were recently reunited with their mother when a tip led authorities to the correct location in Texas, said she had been "filled with disbelief that something like this (stealing) could happen and the authorities do nothing. They say they can't help you."

Because of this many parents try hiring private detectives in an expensive attempt to locate the missing parent and children. The Samuelses, after hopelessly hiring and dismissing two investigators, went out on an expedition of their own.

Following the advice of a very convincing occultist they traveled to Northern Arizona. "We went through places where the roads had no names and even where there were no roads." All to no avail trying to find the location the mystic had described.

"It just shows our desperation," says Samuels.

STEALING OWN CHILD: DOMESTIC OR CRIMINAL?

(By Patricia Quinn, Staff Writer)

Parents who see their children kidnapped by strangers can get public officials and oftentimes the public itself, moving heaven and earth to retrieve them. But what of the parent who sees his child—his singularly in most instances by virtue of a divorce and custody decree—stolen by the other parent?

He is frequently left feeling helplessly frustrated or even angrily disillusioned, a situation which can drag on for several months or even years, particularly if the child is taken out of state or to another country.

Why the frustration? Partly, according to officials interviewed because of attitude and partly because of confusion surrounding enforcement of present civil and criminal laws.

The federal kidnapping law specifically does not apply to child stealing cases because parents are excluded from coverage. Paul Flynn, an assistant U.S. Attorney in the Los Angeles office, said he worked for two months trying to determine some way other federal laws could be applied to child stealing. He was not successful.

His office became involved when pressured by Beth Kurrus, Newhall founder of a citizen's committee after her daughter's children were taken out of state by the father. Flynn described Mrs. Kurrus as "an aggressive, intelligent woman. She pressed us, and I'm glad she did."

But he came up empty handed, the attorney admitted.

"She wanted this office to issue a complaint against her daughter's ex-husband for unlawful flight to avoid prosecution. We wanted to do it, but our hands are tied."

Flynn explained that the Federal Bureau of Investigation prosecutes all unlawful flights across state lines but if it's actually a kidnapping by a parent, then the attitude is hands-off. He said the Justice Department avoids these "because in most instances the situation is domestic, a matter of marital discord."

The Justice Department only gets involved in domestic situations, he said, in certain exceptional cases; for instance, if the person is a convicted felon or known child molester.

The federal government leaves all other cases for each state to handle, knowing that the state has several ways of operating on this issue. He then pointed out that if cooperation between the states in question exists, then a pickup of the abducting parent, who frequently flees to a neighboring state, could be made with no need for federal assistance.

The stealing of Mrs. Kurrus' grandchildren, recently reclaimed in Texas after being missing for 16 months, was the first such case Flynn knew his office to be involved in.

"But no matter which way we turned we couldn't find jurisdiction for the federal government. We finally wrote Mrs. Kurrus saying the federal government can't get involved. We did everything we could but . . ."

On the state and local level, a spokesman at the Los Angeles County District Attorney's office pointed out that the way state laws are interpreted and enforced, a parent can in effect legally kidnap his child. In other words, what is technically a crime is not actually regarded as a crime.

Many times, the spokesman said, the parent acts rashly when he feels the court decision leaving him without custody was unjust. "Most of these are short term kidnappings with the stealing parent eventually contacting the other parent and the matter becomes resolved on its own."

The basic procedure in child stealing cases involves more than one agency, namely the police and city or district prosecutor or private attorney and civil court judge and marshal.

Sgt. J. J. Hurlbirt of Long Beach Police Department's homicide division, which handles child stealing as a crime against the person, explained the police view in these situations. "We sympathize with the parent, but we have to work within the law. The wife is supposed to go to her attorney who would talk to the judge and the judge issues a contempt of court warrant."

(The divorce and custody are established in civil court and a violation of the custody order is therefore grounds for a contempt of court citation.)

Under California state criminal code the police have two sections which apply to child stealing, one is a misdemeanor, the most commonly used section, and the other is a felony.

In order to obtain a warrant for arrest under the law, Sgt. Hurlbirt said, the detective can average from two days to two weeks checking with all people involved, especially the stealing parent if he can be located to make his report for the city or district prosecutor to issue a warrant. The district attorney is used for all out-of-state flights.

If the fleeing parent can't be located then it becomes a continuing investigation and the police division, with its complement of eight detectives, lacks sufficient manpower, said Hurlbirt.

"We just have to take first things first. Everybody's problem is important to them, but we have to have a certain priority," he continued, listing murder, rape, assault and felony wife beating cases, especially those with arrests underway as priority items.

As for getting the warrants issued, the sergeant declared that "each case must be handled individually. If the parent plans to try for new custody proceedings, then a warrant won't be issued." He conjectured the reason for this would be a feeling on the prosecutor's part that custody proceedings in civil court would resolve the matter.

A spokesman at the district attorney's office, who refused to be quoted by name, contends that "usually the parents take good care of the child. The stealing is more an emotional thing. They won't harm the child. These people are not criminals and an expenditure of funds in that area seems needless."

He also stated his belief that child stealing by a parent doesn't belong in the "realm of criminal justice. It should be handled in a civil fashion."

Head Deputy of the Long Beach District Attorney's office, John Provenzano, liked to ask a rhetorical question when discussing child stealing. "When you look at the whole broad spectrum of criminal justice, do you think that this is the most important area, the most pressing need? I don't think so."

Often times, he continued, "these are good citizens who are unhappy with the civil court's judgment so they exercise a form of self help."

These situations "generally resolve themselves," Provenzano said and therefore most officials are disinclined to get involved.

"In the whole scheme of things," he said, "child stealing is not regarded with the same urgency as capital crimes. A parent takes his child and technically it's child stealing," the DA pointed out, asking, "but would you arrest him on a felony?"

Child Stealing—Victimized Parents Battle

(By Patricia Quinn, Staff Writer)

Parents who have lost their children and found no solace in questionably protective laws are joining together on various fronts. They feel unable to simply sit back and hope, and instead are vigorously attempting to tie up loopholes.

"If the law gives the custody to one parent, it should back it up!" vehemently declares Beth Kurrus, a grandmother who started a tireless crusade after her daughter's children were taken more than 16 months ago.

Mrs. Kurrus has leveled most of her attack against the Department of Justice and hopes eventually to see the Federal Bureau of Investigation given authority to act in child stealing cases.

Temporarily taking a breathing spell now that her grandchildren have been found and returned from Texas, the Newhall woman plans to step up her work shortly. In the meantime she continues her round of speeches and television appearances.

Bernette Der Paulian, a Long Beach mother whose children were taken to South America, has written and tried other pressure techniques to get passport rules changed to eliminate the ease with which the parent without legal custody can obtain a passport for the children.

So far she has met little success but hopes that "in this computer age," the Passport Department can be notified easily enough at the start of all divorce and custody proceedings.

Both Mrs. Der Paulian and Mrs. Kurrus and many other similarly situated parents have written to various state legislators in attempts to get the laws changed. In addition, the two women have written letters on the national level to U.S. Sen. John Tunney, D-Riverside, in the hopes that his personal experience will be enough to motivate him to work for others in the same predicament.

Tunney's wife flew to Holland with their children, of whom they have joint custody, and only recently returned.

"'At last, it's finally happened to a Senator," Mrs. Der Paulian had thought in relief. "Now maybe we can get some action."

With a slightly more united front on the state level, Edward Anhalt, former field representative for Assemblyman Ken Meade, D-Oakland, formed a lobbying group while there, called "Parents of Stolen Children."

In a letter to the editor published in February in the Fresno Bee, Anhalt wrote of a "widespread scandal . . . known as child stealing . . . which can be accomplished easily and legally.

"As long as this state refuses to investigate the whereabouts of the father and child, and fails to extradite the child back to the mother, there will be an increasing number of women victimized by this inadequate law."

Nancy Rockeman, a Meade administrative assistant who still works on this committee, said that the group is trying three possible methods of remedy.

One would be the establishment of a uniform code between states under which child stealing would be an extraditable offense. California has already approved this measure, according to Assemblyman Michael Antonovich, R-Los Angeles who also is interested in stronger legislation.

The next step there is for other states to approve the measure.

A second remedy would be to increase the penalty, a measure sought with reluctance since, according to Ms. Rockeman, a more preventive method would be preferred and possibly more effective. The third alternative would be to amend the family law to make any children wards of the court as soon as divorce proceedings begin. Many times, says Ms. Rockeman, one parent will leave with the children even before custody is established. This effectively sabotages any recourse for the other parent.

The group hopes to have any or all of these proposals introduced as legislation during the next session. "In the beginning we were just researching facts but we kept turning up parents experiencing the same thing," say Ms. Rockeman.

"This is not a stable feature for children. They are caught in a ball game and batted back and forth between broken homes," she adds noting one case where the child was finally just "shipped back home five years after being taken away."

Problems of his constituents have already prompted Assemblyman Antonovich to introduce a bill which, if approved, would make it a misdemeanor for the relative of a person believed concealing a stolen child to fail to disclose or lie about his knowledge of the child's location.

Child stealing is definite a problem, says Antonovich, "and should be resolved."

Meanwhile, Regeina Samuels, the Bellflower woman who failed in her attempt to have her former father-in-law testify where his son had taken their child, sits waiting in her small apartment. A yellowing note is pinned to the front door.

The faded writing details who to notify in the offchance that 5-year-old Leslie could show up while no one is home.

Mr. CONYERS. Because of the fact that the House of Representatives has called us to the floor and we are under the first bell, as those three lights indicate, unfortunately, I have no other recourse at this time but to pronounce these hearings adjourned until the next call of this subcommittee chairman. I deeply appreciate all of you coming.

The committee stands adjourned.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

AMENDMENTS TO THE FEDERAL KIDNAPING STATUTE

WEDNESDAY, APRIL 10, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. [chairman of the subcommittee], presiding.

Present: Representatives Conyers and Cohen.

Also present: Maurice A. Barboza, counsel, and Constantine J. Gekas, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

Today we begin our second hearing on H.R. 8722, which would amend the Federal kidnaping statute to create a rebuttable presumption concerning people who travel and do not arrive at their destination.

The purpose of the legislation introduced by the gentleman from New Jersey, Mr. Forsythe, is to mandate the investigative assistance of the FBI in certain missing persons cases. The subcommittee in its February hearing revealed several facts which could have triggered the assistance of the FBI in the *Karen Levy* case but they did not act and since that hearing, the Criminal Division of the Department of Justice has announced that it has initiated a new policy of reviewing decisions of field personnel with regard to investigating missing person cases.

[The letter of March 18, 1974, follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., March 18, 1974.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The courtesy which the Chairman, members, and staff, of the Subcommittee on Crime extended to Deputy Assistant Attorney General John C. Keeney and Mr. R. J. Gallagher when they appeared on February 27, 1974 before the Subcommittee to present the Department's views concerning H.R. 4191 and H.R. 8722, bills which would amend the Federal Kidnaping statute, is appreciated.

For your information, the Criminal Division has initiated and implemented a new policy whereby this Division closely reviews any decision by field personnel of this Department not to investigate in those missing person cases wherein the facts indicate possible violations of the kidnaping statute. Under this new policy the Bureau will refer information concerning questionable cases involving possible kidnapings to this Division.

In view of the Subcommittee's interest in this area, this Division will very carefully consider whether or not the facts of each case so presented indicate a possible violation of the Federal kidnaping statute that the FBI should investigate. You may be assured that in the future the review by this Division will be more full and complete than the evaluation in the Karen Levy case.

We believe that this policy will affect the Subcommittee's purposes and that amending the Federal kidnaping statute along the lines of H.R. 8722 is neither necessary nor desirable.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General.

We are very pleased to have with us again the principal author of the legislation which is the subject of today's hearing, the gentleman from New Jersey, Mr. Forsythe. We have his statement, which will be reproduced in the record, and we invite him to continue his testimony in his own way.

[The prepared statement of Mr. Forsythe follows:]

STATEMENT OF THE HONORABLE EDWIN B. FORSYTHE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I very much appreciate the opportunity to appear before this committee again to discuss H.R. 8722. Today I would like to address myself to the question of whether there is still a need to pass H.R. 8722, in light of the Justice Department's "new" policy in possible kidnaping cases.

When the Karen Levy case was brought to my attention, I believed the evidence suggested that Karen had been the victim of foul play. However, the FBI regional office had made a decision not to intervene in this case.

Therefore, Senator Case, Senator Williams, and I sent a letter to Attorney General Kleindienst asking him to reverse the decision of the regional office. The Governor of New Jersey also sent a letter to Mr. Kleindienst making the same plea.

The response from the Department of Justice was signed by Assistant Attorney General Henry Petersen and it read in part:

"The FBI has been contacted regarding this matter to determine if there are any facts which would support federal jurisdiction under the federal kidnaping statute. A thorough review of the circumstances surrounding the disappearance of Miss Levy reveals no indication, other than pure speculation, that she crossed a state line. It is also apparent that Miss Levy was not abducted in the first instance by the man who offered her a ride which, if an abduction could be shown to have occurred, could trigger the presumption that a state line had been crossed. Without some clear evidence that a state line has been crossed or an abduction has occurred there is no basis for the exercise of federal jurisdiction in this case."

Mr. Petersen, speaking for the Department of Justice, thus took the position that after a "thorough review" of the case, the Department had concluded that it had no legal authority to intercede.

I then wrote the President asking his assistance and in March 1973, I received a reply from John Dean who explained:

"As you may know, the FBI's investigative jurisdiction is statutory in nature, and extends only to those cases in which there has been a violation of a federal law. Although the FBI has maintained constant contact with the local investigation authorities since Miss Levy's disappearance on November 10, 1972, the facts developed to date fail to indicate that there has been a violation of the Federal Kidnaping Statute or any other Federal statute within the purview of the FBI. It is for this reason that the FBI is unable to actively investigate Miss Levy's disappearance, and accordingly, it would be neither appropriate nor within the scope of the President's authority to direct the initiation of such an investigation."

After receiving that reply, I spoke with Chairman Rodino who agreed with me that the FBI did have the authority to intervene in the Karen Levy case and indeed should have done so. The Chairman wrote to Mr. Ruckelshaus, who was then the Acting Director of the FBI, expressing his view that the FBI

did have the needed statutory authority and should intervene in this matter. The response once again indicated that the FBI did not have jurisdictional authority in this case.

After being told by one Presidential counselor, one Assistant Attorney General, and one FBI Director, that the FBI had already conducted a thorough review of the case and did not have the authority to intervene under existing statutes, I introduced H.R. 8722 to give the FBI the authority it claimed not to have.

Now, according to Mr. Petersen, the Justice Department has discovered that the FBI did have the authority to investigate in the Levy case. We are also now told that despite previous statements that the FBI had conducted a "thorough review" of facts surrounding the Levy case, a "new" procedure has been established so that the Department can conduct a thorough review in future cases.

At this point I would like to make a few observations about this "new" policy. In the first place I am not certain how this "new" policy differs from the "old" policy.

In response to a question by Mr. Rangel, the FBI's representative at the first hearing, Mr. Richard Gallagher stated:

"The agent in charge of our Albany office, which covers Syracuse, reviewed all the facts along with the case agent and they did not feel that there was a violation. They then discussed it with the U.S. Attorney—here are the facts, is this a violation of the federal kidnaping statute—and he said, 'No, it is not.' Then we could have gone to the Department of Justice and ultimately it was brought to the Department of Justice."

Mr. John Keeney, the Deputy Assistant Attorney General within the Criminal Division, expanded on Mr. Gallagher's comments, stating:

"The Levy case was reviewed by the Bureau and by the Department and it was concluded that there were not sufficient indications of kidnaping to warrant going into the case."

Thus, it would appear that the "new" policy of review by the Department of Justice was already in place when the decision on the Karen Levy case was made. But I think there is one more point that should be made, and that has to do with who will be implementing this "new" policy.

Again, I would like to quote Mr. Keeney when he told the subcommittee:

"I think that the people who made the decision in this case, and a number of them were involved in it, thought they were right, and still think they were right."

Mr. Chairman, I think the history of this case and the comments made during the subcommittee's first hearing clearly indicate the need for legislation like H.R. 8722.

If, in the first instance, the Department of Justice makes the administrative decision that it lacks certain authority but then reverses itself—what is to prevent another change of heart in the future—unless the Congress acts to make it clear that the FBI does have the statutory authority.

And with respect to the "new" policy that will be implemented, the "new" policy sounds strikingly similar to the "old" policy since we are told that the Criminal Division of the Justice Department did indeed review the Karen Levy case, only to conclude that the FBI lacked statutory authority to intervene. In this regard I hasten to point out that the people who will be implementing this "new" policy are likely to be the same people who, according to Mr. Keeney, still think the FBI lacks statutory authority.

Mr. Chairman, and members of this subcommittee, in light of the history of this case, I believe the Congress should pass legislation and, once and for all, settle this question of whether or not the FBI has the necessary statutory authority.

TESTIMONY OF HON. EDWIN B. FORSYTHE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FORSYTHE. Thank you very much, Mr. Chairman.

I am very happy to be back again to further discuss H.R. 8722 and whether after the last hearing and the assurances of the Department of Justice and the FBI, this legislation is still important.

My statement is rather brief and I will be happy to highlight it if that would aid the committee.

At this point, I think it would be useful to review the direct actions we took with respect to the *Karen Levy* case and the response we received from the FBI and the Justice Department. First, I would like to read the letter signed by Assistant Attorney General Henry Petersen which I received in response to the letter Senator Williams, Senator Case and I sent to the Attorney General requesting that the FBI intervene in this case:

> The FBI has been contacted regarding this matter to determine if there are any facts which would support federal jurisdiction under the federal kidnaping statute. A thorough review of the circumstances surrounding the disappearance of Miss Levy reveals no indication, other than pure speculation, that she crossed a state line. It is also apparent that Miss Levy was not abducted in the first instance by the man who offered her a ride which, if an abduction could be shown to have occurred, could trigger the presumption that a state line had been crossed. Without some clear evidence that a state line has been crossed or an abduction has occurred there is no basis for the exercise of federal jurisdiction in this case.

Mr. CONYERS. From which letter are you reading?

Mr. FORSYTHE. I am quoting from a letter signed by Assistant Attorney General Henry Petersen, January 24, 1973.

I would be happy to have a copy of that letter also placed in the record, so the committee will have the full text.

Mr. CONYERS. All right. We want it in the record. I do not have it before me right at this moment, but I would certainly like to see it.

Mr. FORSYTHE. I believe that copies of the letters I will be quoting are in the committee record.

Mr. CONYERS. We will receive it in the record.

Mr. FORSYTHE. I assure you they will be.

[The letter of January 24, 1973, follows:]

DEPARTMENT OF JUSTICE,
Washington, January 24, 1973.

Hon. EDWIN B. FORSYTHE,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: This is in response to the letter to Attorney General Kleindienst signed by you, Senator Williams and Senator Case, wherein you requested the Attorney General to intercede in the Karen M. Levy matter and instruct the F.B.I. to cooperate and participate in the ongoing state investigations to locate Miss Levy.

The F.B.I. has been contacted regarding this matter to determine if there are any facts which would support federal jurisdiction under the federal kidnapping statute. A thorough review of the circumstances surrounding the disappearance of Miss Levy reveals no indication, other than pure speculation, that she crossed a state line. It is also apparent that Miss Levy was not abducted in the first instance by the man who offered her a ride which, if an abduction could be shown to have occurred, could trigger the presumption that a state line had been crossed. Without some clear evidence that a state line has been crossed or an abduction has occurred there is no basis for the exercise of Federal jurisdiction in this case.

In our discussion with the F.B.I. it was revealed that the state agencies investigating the disappearance of Miss Levy are very competent investigative agencies and are probably doing as good a job as is possible. The F.B.I. has offered the services of the F.B.I. Laboratory, the Identification Division and the coverage of out-of-state leads to aid the local law enforcement agencies in their investigative efforts.

You may be assured that the F.B.I. is monitoring the local investigations and are prepared to and will join the ongoing investigations if evidence appears that will justify the exercise of federal jurisdiction in this matter.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General.

Mr. FORSYTHE. I would also like to point out that Governor Cahill of New Jersey sent a similar letter to the Attorney General requesting FBI involvement.

Moving on I would like to quote from the comments made by Mr. Keeney at the last hearing. I believe these comments should specifically be brought to the attention of the committee in light of what has now been said by the Justice Department. Quoting from Mr. John Keeney out of the record from the last hearing:

The Levy case was reviewed by the Bureau and by the Department and it was concluded that there were not sufficient indications of kidnaping to warrant going into the case.

Thus, it would appear that the new policy of review by the Department of Justice was already in place when the decision on the *Karen Levy* case was made. But I think there is one more point that should be made, and that has to do with who will be implementing this new policy.

Again, I would like to quote Mr. Keeney when he told the subcommittee:

I think that the people who made the decision in this case, and a number of them were involved in it, thought they were right, and still think they were right.

Mr. Chairman, I think the history of this case and the comments made during the subcommittee's first hearing clearly indicate the need for legislation like H.R. 8722.

If, in the first instance, the Department of Justice makes the administrative decision that it lacks certain authority but then reverses itself—what is to prevent another change of heart in the future—unless the Congress acts to make it clear that the FBI does have the statutory authority.

I think another point should very much be kept in mind. This bill does not mandate action by the FBI. It does however provide a statutory base for their action which I believe is important and necessary because everything the Justice Department and the FBI stated while we were seeking their assistance reflected their view that the FBI did not have the necessary statutory authority.

Apparently they have now changed their mind. But I think it should be made clear by legislation that the FBI does have the authority so that this argument could no longer be used. The FBI did not participate in the *Karen Levy* case because they claimed not to have jurisdiction and who can tell what would have happened if they had moved in the case at the time they were first apprised of the facts surrounding the disappearance of Karen Levy.

With that, I will close and be happy to answer any questions.

Mr. CONYERS. I gather from the thrust of your remarks, which we appreciate very much, that the so-called new policy that was ini-

tiated to review decisions not to investigate in missing person cases was already operative at the time of Karen Levy's reported disappearance.

Mr. FORSYTHE. This is what I think the record clearly shows. The Justice Department told us this, in this letter from Mr. Petersen, and in all of our approaches to them.

Mr. CONYERS. Were you presented with a copy of the March 18, 1974, letter that Assistant Attorney General Petersen sent to me?

Mr. FORSYTHE. I believe we do have it. [See p. 91.]

Mr. CONYERS. In that letter he gave me those assurances and which gave rise to this additional hearing, because I think most of the members of this subcommittee are trying to reach a rather fundamental judgment: whether there has or has not been enough policy improvement to eliminate the necessity of our moving this legislation forward.

Mr. FORSYTHE. As I tried to point out in the testimony today, I just do not think Mr. Petersen's recent letter quite squares with what has been the history of this case. The Justice Department claimed they had thoroughly investigated the case and used the obscure statutory authority as the basis for not becoming involved.

That is a question I do not think should be open down the road.

Mr. CONYERS. I recognize the gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Congressman Forsythe, you indicated that under this proposed legislation it is not going to mandate anything. But in looking over the language, it says:

> The failure of a person who voluntarily agrees to travel with another to a particular destination to arrive at that destination after a reasonable period of time creates a rebuttable presumption that person in effect has been abducted.

Is that not in essence a clear description, in the strict holding of statutory law at least, of missing persons cases? Wouldn't it include the thousands upon thousands of missing persons cases?

I happen to agree with you as far as the abuse of the discretion and lack of discretion in the *Karen Levy* case, as I tried to point out during my questioning last time. But it seems to me the failure of the Justice Department or the FBI or whoever made the decision was one in failing to take into account various circumstantial factors, such as home life, or college life of moral character, that would lead to a conclusion beyond speculation that Karen Levy had been abducted.

But this bill does not take into account those other circumstantial factors. It would say whenever anyone is missing after having voluntarily taken a ride with someone and not arriving at that destination it creates a rebuttable presumption. That means the FBI will automatically have to get involved at least without regard to the circumstantial factors or evidence that they should take into account to determine whether it is simply a missing persons case, which they should not get with.

I am just concerned about it.

Mr. FORSYTHE. I would fully agree with your statement that the FBI should not get involved in missing person cases. This is not the point we are trying to arrive at.

I could agree with the committee's judgment in terms of specific language that would make clear the end point we are trying to arrive at.

Mr. COHEN. Let us go back to the facts of the *Karen Levy* case. It seems to me if we pass this kind of legislation, every single case which involves the taking of a ride voluntarily and not arriving at a destination—a reasonable time could be a 24-hour period, 7 days, or whatever—then you automatically have the FBI involved.

Perhaps there should be some language—if we ever do adopt this sort of a procedure—there ought to be some language which just allows the FBI to investigate it without necessarily committing itself, being forced to commit its resources, limited as they are, to every single missing persons case under circumstances which a person voluntarily gets in a car and does not arrive.

I think the *Levy* case is quite distinguishable. I regret that the people involved did not persist in discretion but simply followed the rule of law—no abduction, no kidnap. That, to me, is not filling the function of the spirit of the law. But I do not know that I want to go back completely the other way and say "mandate"—every time there is a situation involving a missing person that the FBI has to get involved. And I am concerned that this language would compel that result.

Mr. FORSYTHE. As I said, I fully support something that would tighten the parameters in this area.

Mr. COHEN. Thank you.

Mr. CONYERS. I think my colleague has put his finger on it. What appears to be a reasonable conclusion is that, had there been an effective policy, the facts in the *Karen Levy* case alone should have warranted the FBI to enter the case.

Now, how do we get around it? Are you willing to consider legislation that will have some limiting effect, so we do not bring in the thousands upon thousands of missing person cases that could, perhaps—even in your view—mistakenly force the FBI into a position where it would be totally overloaded?

Mr. FORSYTHE. I fully agree.

Mr. CONYERS. A part of your prepared statement referred to the fact that you wrote the President and received a response, not from the President, but from John Dean. Is that correct?

Mr. FORSYTHE. That is correct.

Mr. CONYERS. Do you have, and would you be willing to add that letter to our record being compiled here, as well as Mr. Petersen's?

Mr. FORSYTHE. Yes, sir, we do. We would be glad to make sure you receive my letter together with the response, and also copies of two letters sent to Attorney General Kleindienst from myself and the two New Jersey Senators and Governor Cahill.

[The letters follow:]

JANUARY 30, 1973.

Hon. RICHARD M. NIXON,
The President, The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am enclosing copies of recent correspondence between myself, Senators Clifford P. Case and Harrison A. Williams, Jr., and Attorney General Kleindienst with respect to the disappearance of a teenage girl who resides within my District.

As you will see from this correspondence, my request for direct FBI intervention in this matter was denied by the Attorney General's office. I am appealing to you to please instruct the FBI to fully participate in this investigation.

Karen Levy, 18, has been missing since November 10, 1972, when she accepted a ride from Syracuse University to New Jersey. Her parents, and hundreds of others sympathetic to their case, have written to you imploring you to order the FBI into the case. I am hopeful that, after you have considered all of the facts, you will agree that every effort must be made to find Miss Levy.

Thank you for your consideration, Mr. President.

Sincerely,

EDWIN B. FORSYTHE,
Member of Congress.

THE WHITE HOUSE,
Washington, March 14, 1973.

Hon. EDWIN B. FORSYTHE,
House of Representatives,
Washington, D.C.

DEAR MR. FORSYTHE: This is in response to your recent letter requesting the President to direct the Federal Bureau of Investigation to investigate the disappearance of Miss Karen Levy.

As you may know, the FBI's investigative jurisdiction is statutory in nature, and extends only to those cases in which there has been a violation of a federal law. Although the FBI has maintained constant contact with the local investigating authorities since Miss Levy's disappearance on November 10, 1972, the facts developed to date fail to indicate that there has been a violation of the Federal Kidnaping Statute or any other Federal statute within the purview of the FBI. It is for this reason that the FBI is unable to actively investigate Miss Levy's disappearance, and accordingly, it would be neither appropriate nor within the scope of the President's authority to direct the initiation of such an investigation.

You may rest assured, however, that the FBI is following this matter closely. Full use of all of the FBI's service facilities has been offered to the local authorities including the coverage of out-of-state leads, and in the event evidence is obtained which will justify the exercise of Federal jurisdiction, a full FBI investigation will be promptly initiated.

I regret that we cannot be of greater assistance to you in this matter, but trust you will understand the necessity of our position.

With kind regards,

Sincerely,

JOHN W. DEAN, III,
Counsel to the President.

JANUARY 8, 1973.

Hon. RICHARD G. KLEINDIENST,
Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. KLEINDIENST: Two months ago, Karen M. Levy, 18, of Cherry Hill, New Jersey, a student at Syracuse University, accepted an offer for an automobile ride from Syracuse to Monmouth College in West Long Branch, New Jersey, where she planned to visit her boyfriend. She has not been seen or heard from since.

Miss Levy had placed an advertisement on a campus bulletin board seeking the ride. She was contacted by a man who identified himself as "Bill Lacey," who said he was making a business trip to her area. She was taken, by friends, to the Upstate Medical Center to meet Lacey. She walked, with him, toward a parking lot and disappeared.

Mr. Bertram D. Levy, Karen's father, has hired private detectives to help find his daughter. Syracuse Police, the New Jersey State Police and the New York State Police have been working on the case cooperating with the private investigators. There have been both land and air searches of the area, and the logical route that would have been taken if they actually traveled toward West Long Branch.

Repeated requests by the undersigned to the FBI in Washington to actively participate in the case have been rejected. Last week Syracuse Police Chief Thomas J. Sardino formally requested the FBI, through resident agent George Simpson, to fully enter and investigate the case. We have just learned that his request has been rejected by the Albany Office of the FBI.

Mr. Attorney General, we all believe that there is a basis and a desperate need for the FBI to fully enter this investigation.

Mr. Lacey, according to witnesses who have come forward, intended to transport Karen across a state line. Police checks have indicated that his story to Karen cannot be substantiated. For example, he said he was making a delivery at the hospital and that is why she was to meet him there. The hospital was not expecting him. Chief Sardino, of course has all of the pertinent facts involved.

We are urging you, Mr. Attorney General, to intercede in this matter at once and to instruct the FBI to cooperate and participate in the ongoing investigation to the fullest extent. It is absolutely imperative that every possible effort is made to find Miss Levy and return her to her family.

Your prompt attention to this matter will be greatly appreciated.

Sincerely,

EDWIN B. FORSYTHE,
Member of Congress.
HARRISON A. WILLIAMS,
U.S. Senate.
CLIFFORD P. CASE,
U.S. Senate.

Enclosure.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, January 9, 1973.

Hon. RICHARD G. KLEINDIENST,
Attorney General, Department of Justice,
Washington, D.C.

DEAR GENERAL: On November 10, 1972, Miss Karen Levy of Cherry Hill, New Jersey, disappeared from the campus of Syracuse University. She has not been heard from since that time.

Miss Levy was offered a ride to Monmouth County Community College in New Jersey by a man calling himself Bill Lacey from Cleveland, Ohio. Lacey's offer was the result of a notice placed on the College bulletin board by Miss Levy. No attempts to identify Mr. Lacey have been successful and investigations by the Syracuse police, the New York State Police and the New Jersey State Police have proven fruitless. The Syracuse police have determined that "Mr. Lacey" had apparently offered a similar ride to another woman who did not accept.

I am, of course, aware of the reasons for and impediments to your taking on this case. However, there are some notable dissimilarities between this case and the usual "missing person" situation. Inter-state carriage was proffered by "Mr. Lacey" and Miss Levy expected inter-state carriage, raising a reasonable possibility that inter-state movement took place. In addition, Mr. Lacey identified himself as being from Ohio so both New Jersey and Ohio are possible destinations. Since Miss Levy has been missing for almost two months, abduction can reasonably be presumed.

Any assistance which you can render in this tragic situation will, I am certain, be greatly appreciated by Miss Levy's parents.

Yours very truly,

WILLIAM T. CAHILL, *Governor.*

Mr. CONYERS. So, if this so-called new policy was going on and you went all of the way up to the White House on it, it apparently isn't very workable.

I do not know what more we can extract from these conclusions. You stated it very effectively in your usual straightforward manner. I think right now we are waiting for Mr. Petersen to arrive—he is here. All right, then.

There being no further questions for our colleague from New Jersey, we want to thank him again and ask Mr. Petersen to come forward. Thank you very much.

Mr. FORSYTHE. Thank you, Mr. Chairman.

Mr. CONYERS. We are very happy to welcome Mr. Henry Petersen, the Assistant Attorney General, who has a distinguished career in law enforcement. A former FBI agent, Mr. Petersen has been a Deputy Assistant Attorney General, Assistant Attorney General in the Criminal Division, and has served with distinction across the years in the Federal Government law enforcement agencies.

You may recall that in my letter to you of March 29, I outlined some issues that were raised concerning the legislation in our discussion—in terms of the number of cases that would be reviewed—the procedure for reporting failures to investigate, and other basic questions.

[The letter of March 29, 1974, follows:]

MARCH 29, 1974.

Hon. HENRY E. PETERSEN,
Assistant Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. PETERSEN: During a markup session on H.R. 8722 on Thursday, March 21, 1974, the Subcommittee on Crime considered your letter of March 18 outlining the new policy of the Criminal Division of reviewing decisions made by field personnel of the Department of Justice not to investigate possible violations of the Federal kidnaping statute.

Because of your letter, the subcommittee decided to defer action on H.R. 8722 until it has had an opportunity to carefully study this new policy. Toward this end, I am confirming arrangements, already made by counsel, for you to testify at a hearing to be held on April 10, 1974, at 10:00 am in 2141 Rayburn House Office Building

Subcommittee members are particularly concerned with the permanence of the policy We would like assurances that it will not be either neglected in the future or overturned by future Attorneys General. The following issues will be raised with respect to policy implementation: the anticipated number of cases to be reviewed, the procedure for reporting failures to investigate, the time involved in reviewing failures to investigate, the chain of authority from the initial decision not to investigate to the individual with final review authority, and the minimum elements or facts which would prompt the criminal division to overturn a field decision not to investigate a kidnaping case

I look forward to your appearance before the subcommittee. Should you have any questions regarding the hearing, please let me know.

Sincerely,

JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime.

Mr. CONYERS. I think you heard the testimony, or most of it, of our colleague from New Jersey, and we invite you to respond in this matter in any way you see fit. We have your prepared statement and it will be reproduced in the record at this point.

[The prepared statement of Mr. Petersen follows:]

STATEMENT OF HON. HENRY E. PETERSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Mr. Chairman and members of the subcommittee, I am here today pursuant to your request for additional information concerning the Criminal Division's policy in missing person cases.

As indicated in my letter to the Chairman of March 18, 1974, under this policy Criminal Division attorneys will closely review for evidence of a possible violation of the Federal kidnapping statute those decisions by field personnel not to investigate questionable missing person cases. I have asked the Federal Bureau of Investigation to furnish to the Criminal Division copies of communications it receives in "questionable missing person cases which may involve a possible violation of the Federal kidnapping statute." In turn, the FBI has ordered its field offices to bring such information to the attention of FBI Headquarters as expeditiously as possible, and to include with the information the opinion of the local U.S. Attorney's office if such opinion is available.

Mr. Chairman, in your letter of March 29, 1974, you stated that subcommittee members are particularly concerned with the permanence of the policy. I can only respond that this is now the announced policy of the Criminal Division, that I see no reason to overturn the policy, and that I see no reason now to expect that future Assistant Attorneys General will overturn it. As a practical matter, in large measure the continued implementation of the policy is and will be in the hands of the career professionals of the Criminal Division in whom I have the utmost faith subject of course to appropriate supervision.

I am not able to give you an estimate of the number of cases which will be reviewed under this policy in the future. The FBI has reported to you that in calendar year 1973 there were 1,964 cases referred to the FBI which were classified simply as missing persons cases. I do not know how many of that number involved a disappearance under circumstances of a suspicious nature which would now be subject to Criminal Division review under the new policy. In the same calendar year, the FBI did investigate 1,615 other cases in which the evidence indicated that an abduction had taken place.

The time required to review a decision by field personnel not to investigate a missing person case, and the minimum facts necessary to prompt the Criminal Division to reverse such a decision, will necessarily vary because our review is conducted on a case-by-case basis and is dependent upon the particular facts and circumstances of each such case. We do, of course, recognize the critical importance of the time factor in such investigations, and therefore our review is conducted on an expedited basis. The following example may be illustrative.

On March 19, 1974, the FBI furnished the Criminal Division materials concerning the disappearance of a four-year-old girl in Seattle, Washington. The materials consisted primarily of newspaper clippings indicating that the child had disappeared while playing near her home with her two-year-old brother. An extensive search by local officials failed to locate the child. Because of her age and the failure of the extensive search to locate her, we concluded that she may well have been assisted in leaving the area by an unknown person or persons. Consequently, by memorandum dated March 20, 1974, I requested that the FBI immediately institute an investigation of her disappearance as a possible violation of the Federal kidnapping statute. I should emphasize that her age and the fact that she could not be located over an extended period of time were the *only* known factors indicating to us that she probably had been kidnapped.

I will be pleased to answer any questions which you may have.

TESTIMONY OF HON. HENRY E. PETERSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. PETERSEN. I think that is satisfactory, Mr. Chairman. I am pleased to meet you and pleased to meet Mr. Cohen and members of your staff. You have my prepared statement. I will not read it, but will make a few remarks.

I must say in all candor, as we start out, I wish we were in complete agreement on what I am afraid we are not. The position of the Criminal Division, the position of the Department of Justice, the position of the FBI, is that we oppose the legislation.

We think that the jurisdictional basis under the Federal kidnaping statute is ample at the present time for the exercise of FBI jurisdiction in kidnaping cases. We feel that the limited number of FBI agents, something approximating 9,000, is not adequate to handle the enlarged jurisdiction contemplated by the proposed bill.

We believe that the facilities and the aid extended by the Federal Bureau of Investigation in cases of questionable jurisdiction, the aid of the FBI laboratory facilities, the missing person index, and more importantly—more importantly, because it partakes of affirmative investigative effort—the FBI's action in running out-of-State leads when requested to do so by the local police agencies involved, are more than ample in response to the cases of questionable jurisdiction.

We concede, however, that that practice of aiding local police departments is not the total answer and, for that reason, on February 6, in connection with the *Janice Pockett* case, we managed to turn around an FBI policy that had extended from the time of the kidnaping statute, which was reiterated in most strong terms in 1956 by the Attorney General, Mr. Brownell, when he told the Federal Bureau of Investigation that he had no intention of permitting the Criminal Division to intervene in questions of jurisdiction under the kidnaping statute, that that authority would be left entirely to the Federal Bureau of Investigation.

We managed to change that policy in February of this year to provide for review of questionable missing person cases to determine whether or not there was indeed an abduction and I think, in addition to that, whether or not the FBI can serve any useful role in the investigation.

Those are critical factors that enter into any review of these matters. And in connection with the *Janice Pockett* case we, indeed, despite the initial response of the Federal Bureau of Investigation that there was no jurisdiction, requested, that they institute the investigation.

We understand they have undertaken, pursuant to that change in policy, to submit to us the relative data in the shortest time possible for our review, so if we do have a difference of opinion, we can express it and if they are not disposed to investigate after discussing the matter, we can turn them around.

I think that is as far as we can go. We deal with a matter of Federal-State jurisdiction. We deal with limited Federal personnel. Every administration that I have been associated with has supported firmly the policy that we should not have a Federal police force, that the primary responsibility for "law and order," if you will excuse the phrase, for police work, belongs to the State and local government and the Federal Government's obligations extend into those areas where for one reason or another the State or local authorities are incapable of acting or the Federal Government can bring something to the investigation which the States sorely need and which the States will not construe as in interference with their jurisdiction.

I think those are vital factors to be taken into consideration. I think we have to consider that this policy is a marked change. I think, frankly, you ought to give it an opportunity to work. The three instances that I can recall, the Criminal Division has directed the Federal Bureau of Investigation to investigate in two out of three. The *Levy* case, unfortunately, seems to be the case that gets all of the attention. And well it should, in terms of human suffering. We are not unmindful of that, not at all.

Mr. COHEN. Could I interrupt?

Mr. PETERSEN. The simple fact of the matter is that is not a criteria. That is present in almost every criminal case.

Mr. COHEN. May I interrupt?

Mr. PETERSEN. Please, Mr. Cohen.

Mr. COHEN. Do you think the FBI was correct in declining jurisdiction in the *Levy* case?

Mr. PETERSEN. In the *Levy* case?

Mr. COHEN. Yes.

Mr. PETERSEN. Yes, I do.

Mr. COHEN. Then why are you changing—you agree to a change in policy then and it would be not in response to the facts?

Mr. PETERSEN. The policy was changed initially in relation to the *Janice Pockett* case. Janice Pockett was a young child who was riding her bicycle and the bicycle was found, the neighbors testified a scream was heard, and the Bureau said, "Well, you know, there is no indication that there is a kidnaping, no demand for ransom, for all we know it is a local crime, a local murder." That judgment did not suffice and we ordered them in. But that is distinctly different.

Now, I understand your concerns about the family background and moral character. Those are factors, to be sure, but not determinative factors.

Mr. COHEN. What factors would you consider? I assume it is not the ordinary case where it is clear-cut abduction; there has to be circumstantial evidence. What factors would you think would have been important to determine whether or not she was actually carried away within the meaning of the word abduction, take, exorcisation, that sort of thing. What factors would you as an investigator have considered as opposed to a missing person case or runaway from home?

Mr. PETERSEN. That bothers me in a certain respect. It is certainly easy to say, well, the signs of struggle against her will, but when you get to the meaning of the term "inveigle," according to the language of the statute, then you have an element of deceit that is involved. And that is a troublesome issue.

Mr. COHEN. But what factors would you have considered in determining whether or not she was actually carried away after the initial entering the car? You, not necessarily as an investigator, but as an average person. What would have been important in your mind in determining whether she was in fact a runaway or missing person?

Mr. PETERSEN. Well, I think with respect to whether she is a runaway or a missing person, I honestly do not know, because silence is wholly compatible with both of those factors.

Mr. COHEN. But would it not have been important, for example, on runaway from home, wouldn't you want to know, first of all, if she did not have the home life she had? But in Karen Levy's case, she was not staying at home, she was at college.

Mr. PETERSEN. We parents like to think that, but I don't think that is really a determinative factor. There are too many children from model homes that run away.

Mr. COHEN. That is right. She would not be running away from home because she is not living at home. The next one I assume would be she is running away from college, and you would probably want to find out what kind of academic record she had, what sort of reputation she had on campus, what her predispositions or inclinations might be, what her form of character, was she depressed, was she seeing the college doctor, et cetera, et cetera. These are factors you would want to take into consideration?

Mr. PETERSEN. I think those are factors.

Mr. COHEN. But apparently they were not in this case and that is what I am concerned about.

Mr. PETERSEN. Are you sure? I am not at all sure you are right.

Mr. COHEN. I asked the last time we had testimony here and I do not know anyone ever investigated that aspect of it.

Mr. PETERSEN. I am not sure because the account I read—it is very sparse, to be sure, and I cannot speak dogmatically—suggests to me, one, there was investigation by the college police authorities or investigation by the Syracuse Police Department, and the FBI was cognizant of the developments in all of those things. And I would think it most unusual if her college record was not examined.

I think all of those factors were indeed taken into consideration. But the simple fact of the matter is that the determining factor in a situation like that is the capability of the local police departments, and there was in those instances no indication that the Syracuse Police Department was doing anything less. There was no indication that the FBI was not running out-of-State leads. There was more than that, there was no indication in that case that we could have done one thing more than had been done. That is the factor.

There is no magic to that FBI name, for all of its great reputation. We do not make cases easy simply by our entering. We have no reason to criticize the Syracuse Police Department. Believe me, with the FBI's penchant for publicity, if they had thought they could have solved the case, they would have been in it in 30 seconds in all probability. They could not see anything that the Syracuse Police Department did not do.

Mr. COHEN. Would the Congress also follow; if they thought they could not solve it, would they not step into it?

Mr. PETERSEN. I think in a sense, yes, and not a derogatory sense. I think the conclusion was the Syracuse Police Department had done all that was humanly possible.

Mr. CONYERS. Mr. Petersen, let me read what our colleague from New Jersey indicated that raised the question in my mind as to whether these were facts that were perhaps different from the normal missing person case:

> A man who identified himself as Bill Lacey responded to Karen's notices, offering her a ride. The man's manner and conversation aroused doubts in Karen's mind about whether to accept the proffered ride. Thus, she took care to advise her friends and boyfriend as to the approximate time she would be arriving in West Long Branch. She also asked a girl friend, Paula Lippin, and Paula's boyfriend, Mitchell Sakofs, to accompany her to the Upstate Medical Center where Bill Lacey had asked Karen to meet him. The agreement between the trio was that Karen would accept the ride only if Bill Lacey seemed OK. At the Upstate Medical Center, Karen and her two friends were met by a young man neatly dressed in a business suit who identified himself as Bill Lacey. After a brief conversation, Karen decided to accept the ride and at 6 p.m. on Friday, November 10, 1972 she waved goodbye to her friends. That was the last time anyone has seen Karen Levy.

What that suggested to me is that these were factual circumstances—more unusual than the average missing person case. She did not know the person, and she was uncertain of who he was and whether she should accept the ride with him. She indicated that impression to her friends as clearly as any human being could and, to me, the fact that they were going to cross interstate lines and these questionable circumstances could have justified FBI intervention in that matter.

Do you not agree with that?

Mr. PETERSEN. Well, I am not sure. I do not want to seem indecisive, but I am not sure. Those facts you recite are compatible with interstate excursion and subsequent murder, are they not? They are compatible with no kidnaping. They are compatible with decision to

harm a young lady after she arrived in New Jersey. They are possibly compatible with a decision after she crossed the State line, that she would run away. They are compatible with the fact that a murder may have taken place in the State of New York. They are compatible with any one of those things. But, you know, the point is, it is all speculative.

Mr. COHEN. It would not really be compatible with the suggestion that perhaps she took a ride and then decided she liked the guy so much she would take off with this man?

Mr. PETERSEN. I do not know.

Mr. COHEN. That does not seem compatible with the fact that she called her boy friend in advance and advised him what time she would be there, approximately? That is not compatible with that kind of conclusion, is it?

Mr. PETERSEN. Mr. Congressman, I have given up trying to predict human behavior the last couple of years.

Mr. CONYERS. Let me ask you about another fact that does take us a bit astray. Last evening, I was looking at public television—Tony Brown's Black Journal—in which the question was raised about the activity of the FBI in monitoring the Black National Community. Jack Anderson was on that program. They were pointing out how the FBI had computer printouts, not only on every black political person, but also on entertainers, dancers, artists—almost anybody that ever uttered the phrase, "Black Power."

As a matter of fact, at hearings on Governmental Lawlessness—ad hoc hearings conducted by the congressional Black Caucus, of which I was cochairman with Congressman Dellums of California, Jack Anderson produced the actual printout, which ran on and on. He never unfolded it all. Of course, we are very careful about protecting the names of the people that were on there, but I raise this in reference to your statement about our not having a Federal Police Force and being so short of FBI agents.

Here we have an instance where an apparently great amount of time of the FBI is being devoted to inquiring into who is advocating black power in the black community and conducting all kinds of investigations of admittedly spurious nature. Here we have what I think, at the very least, you can recognize and admit is a close question—if not a very clear question—as to whether FBI involvement is warranted. We are taking a hard line.

I am beginning to wonder if in fact we do not have a national police force, especially when I connect it with some observations made by the gentleman from California, Don Edwards, another Judiciary Subcommittee chairman. At one time he went over to the Pentagon, and they have an "Internal Division for Civilian Unrest," or some such department by that name, which monitors the major urban communities around the Nation.

I saw at the Federal Building in Detroit, Mich., a police car, which pulled away just as I came down the stairs, which said "Federal Police."

All of these things came to my mind immediately when you emphasized the fact we should not or ought not or do not have a Federal police force.

Could you give us some reactions, since it is the first time we have met and, although it is off the subject, it concerns me very greatly.

Mr. PETERSEN. First, I would like to preface my remarks that I have been charged by the Attorney General with conducting a review of the FBI's discontinued counterintelligence program. I have not completed that review. I know from what is being published that there was something of what you refer to included in that, an occurrence that I would not like to comment on.

Mr. CONYERS. I do not want to go into that——

Mr. PETERSEN. A little bit of knowledge is a very dangerous thing.

But I do want to say that neither I nor anyone else I know in the Department of Justice, either Democrat or Republican administration, approved that program of the FBI. And so far as I am concerned that is a questionable utility. That is one.

Second, based on my experience, that at least for whatever credibility I have, I do not believe that we have a "Federal police force." And I believe, it has been my experience, by and large, Federal jurisdiction is circumspectly exercised.

It is clear that there has been some excess. But it is also clear that some of those excesses were triggered in part by civil disturbances of a substantial nature. I need only remind you that after the John Kennedy assassination, one of the criticisms of the Warren Commission was that the Secret Service and FBI did not have enough intelligence information.

Now, that phrase dissected means that they did not accumulate enough information on specified groups of individuals.

Mr. CONYERS. Frequently, too much on people that are clearly——

Mr. PETERSEN. The Kerner Commission made the same point.

Mr. CONYERS. But frequently they compiled clearly unwarranted information on people who obviously had no connection with subversive or criminal activity.

Mr. PETERSEN. Well, you know, I am not certain that is so. But I am not certain that it isn't. The only point I make is that if I am a revolutionary and you and I meet three times a week, you are going to end up in the file, too. That is the problem.

Mr. CONYERS. Well, what I am worried about is that all of the athletes and singers who have completely neutral political viewpoints also ended up in the files with the revolutionaries.

Mr. PETERSEN. Well, you know, I don't know about what you are speaking so I cannot respond.

Mr. CONYERS. I am very glad that you are charged with this kind of investigation.

I want to make available to you, sir, first, the transcript of the Black Caucus' hearings on Governmental Lawlessness, particularly with reference to the Justice Department activities which I have mentioned. I would also like to make available to you the recording, if not the transcript, of the Black Journal television show that is hosted by Prof. Tony Brown of Howard University. The program was on public television only last night, and it bears very directly on this subject matter.

When do you assume that you will be able to complete the report and investigation that you are charged with?

Mr. PETERSEN. I had hoped it would be complete now but it isn't. The only reason I can say is because it is one of many responsibilities and we are now in the stage of trying to prepare an outline of a final report and recommendations are still——

Mr. CONYERS. Have you seen the materials that I have referred to?

Mr. PETERSEN. No, sir, I have not, and I would be happy to examine them.

Mr. CONYERS. Thank you.

Mr. COHEN. May I just follow up the line of inquiry.

Mr. Petersen, you indicated if you were a revolutionary and were seen meeting with Mr. Conyers he would be in the files, too. I am wondering how this sort of thing spreads. If, for example, Mr. Conyers were on an enemies list, and I would associate with him——

Mr. CONYERS. Did you say that was a hypothetical situation?

Mr. COHEN. I am saying "assuming."

I think you were, Mr. Petersen.

Mr. PETERSEN. I think we ought to make it clear from both of us it is hypothetical. I don't enjoy being a revolutionary.

Mr. COHEN. I didn't think you did. But I assumed it was for hyperbolic purposes to say that.

We assumed Mr. Conyers was on a so-called enemies list or at least on this list of black people who have either advocated black power or resurgence of political power to black people and I were to associate with him, either on a professional or social basis. Would I in turn end up in the files?

Mr. PETERSEN. I can't answer that categorically, as you know, but there is a certain amount of chain reaction.

Mr. COHEN. I am moving to the left, as I am saying this, you see.

Mr. PETERSEN. The simple fact, and it is not restricted, if you conduct an inquiry, the Justice Department or anything else, and two people get together in a time frame in circumstances which suggested it is material, then you check out both. I mean it is simply a commonsense evaluation.

That person is ordinarily categorized as a witness, unless some external factors develop which indicates that he is a party to it. But whether it is a subversive activity or a matter of civil unrest or criminal matter, it is the same pattern.

Mr. COHEN. The problem is, there do not seem to be any guidelines or restrictions, and it sort of spreads.

Mr. PETERSEN. I don't think there can be, Mr. Cohen. May I suggest it would be rather difficult for you to structure guidelines as to parameters of this inquiry.

Mr. COHEN. Let's go back to this statement. You said the counterintelligence activities were questionable utility. Let me ask you, were they of questionable legality?

Mr. PETERSEN. Well, you know, that is one of the questions I have to decide. So I will try to give you an answer but I don't want to be held to it.

My assumption is that the Federal Bureau of Investigation has statutory authority or an authority that it derives from the President with respect to internal security matters and that it, generally speaking, does not have jurisdiction to take action on its own, if you will,

which is not mandated either by necessity of its law enforcement responsibilities or mandated by a statute of Congress or mandated by authority of the executive branch of the Government.

Mr. CONYERS. Mr. Petersen, you have been very helpful to us. We appreciate that, and we also appreciate our colleague from New Jersey coming back. I think this has given this subcommittee ample information to try to resolve the question that is rather clearly before us.

Again, thanks for coming. We hope that you will be able to join us in other hearings. I know you are going to be involved with the Judiciary Committee increasingly as we attempt to——

Mr. PETERSEN. I am sorry to hear you say that.

Mr. CONYERS [continuing]. Delineate our oversight responsibility with reference to the Justice Department. So we look forward to seeing you again.

Mr. PETERSEN. Thank you. And may I just add that I will assure you that the policy will be implemented with compassion, with understanding, and with regard for the welfare of the family involved. I cannot guarantee in every case we will exercise jurisdiction.

Mr. CONYERS. Thank you very much.

The subcommittee will stand adjourned until the call of the Chair.

Mr. PETERSEN. Thank you very much. Nice talking to all of you.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIXES

APPENDIX 1

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 7, 1974.

Hon. JOHN CONYERS,
Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives.

DEAR MR. CHAIRMAN: It has come to my attention that the Subcommittee on Crime of the House Judiciary Committee will soon hold a mark-up session on H.R. 8722. This legislation, as you know, authorizes the Federal Bureau of Investigation to investigate in cases where a person voluntarily accepts transportation to a destination across state lines and does not arrive at such destination in a reasonable period of time.

I am strongly in favor of this legislation. Last year I made an inquiry to the FBI regarding the disappearance of Ms. Karen Levy, whose grandparents reside in my District. The FBI responded that they did not have the authority to undertake an investigation into Ms. Levy's case because it could not be established that there was any foul play involved in her disappearance.

There seems to be a conflict of opinion as to whether the FBI does or does not have the authority at the present time to investigate cases such as Karen Levy's. In any case, I believe that this legislation will serve to clarify the FBI's responsibility in this area, and I urge the Subcommittee on Crime to favorably report H.R. 8722 to the full Judiciary Committee when it again comes under consideration.

With best wishes, I am
Sincerely,

WILLIAM LEHMAN,
Member of Congress.

OFFICE OF THE MAYOR,
Cherry Hill, N.J., October 15, 1973.

PETER W. RODINO, Jr.
Chairman of the House Judiciary Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN RODINO: I am writing to you in reference to Bill H.R. 8722 which was introduced by Congressman Edwin B. Forsythe and referred to the Committee on the Judiciary.

We urge that you hold hearings and give prompt action to this Bill.

Very truly yours,

JOHN T. HOLDEN,
Mayor.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, April 4, 1974.

Re: H.R. 8722

Hon. JOHN CONYERS, Jr.,
Chairman of the Subcommittee on Crime of the House Judiciary Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CONYERS: I am urging your support for the above bill, which would amend Section 1201 of Title 18 of the United States Code to create a presumption that a person who voluntarily agrees to travel with another to a particular destination, but does not arrive at such destination after a reasonable period of time is inveigled or decoyed, within the meaning of such section.

The purpose, of course, is to facilitate investigation by the Federal Bureau of Investigation of cases similar to that of the mysterious disappearance of Karen Levy of Cherry Hill, which the federal authorities have refused to investigate, at least officially.

Thank you very much for your consideration of this request.

Very truly yours,

BRENDAN T. BYRNE,
Governor.

APPENDIX 2

[From the Courier-Post, Camden, N.J., Dec. 10, 1973]

KAREN LEVY CASE—BODY NOT MISSING COED BUT SECOND ONE IS CHECKED

SYRACUSE, N.Y.—Police here have concluded that a decomposed body found over the weekend in a cemetery near the Syracuse University campus was not that of missing Cherry Hill, N.J., coed Karen Levy.

But state police, who are investigating the discovery of another decomposed body in Steuben, a community about 60 miles east of here, have not ruled out that it could be that of Miss Levy.

City Police reportedly contacted Mr. and Mrs. Bartram Levy, of 507 Tea Rose Lane, Cherry Hill, on Saturday to inform them the body found in the city cemetery could have been that of their daughter.

Miss Levy has been missing since November 1972 when she reportedly accepted a ride with an unidentified man from the campus to Monmouth College, in West Long Branch. She was an 18-year-old freshman at Syracuse at the time.

Police said an investigation using dental records, a ring and a book that were found near the body identified it as that of Alacia Marie Hauck, 16, a student at Corcoran High School here. She was last seen leaving a history class at the school July 11.

Miss Hauck's body was discovered behind a storage shack Saturday in Oakwood Cemetery by Robert W. Morrison, a Syracuse University student who was on a walk.

Police Chief Thomas J. Sardino said the body was found in underbrush that would normally be thick with vegetation in summer.

Oakwood Cemetery is not far from the Berwyn Avenue home of accused murderer Robert Garrow Sr., a 37-year-old bakery worker, who is being held in connection with the murder last summer of a male camper in the Adirondack Mountains.

Police questioned Garrow in August in connection with the disappearance of Miss Hauck and Miss Levy. Police would not say last night whether Garrow will be questioned again.

State police in Oneida County, said last night tests will begin today at Saint Elizabeth's Hospital, Utica, on skeletal remains found late Saturday by three hunters in Steuben, a town about 60 miles east of here.

State Police Investigator Thomas Gallagher, of the state police Bureau of Criminal Investigation, told the Syracuse Post-Standard the tests will first attempt to determine the sex and age of the remains. They were discovered in a shallow grave by three hunters.

Gallagher has said the remains are "those of an adult," but nothing further can be determined until the tests are conducted.

From there, he said, positive identification may result from tests on dental records.

Capt. Robert McCarthy, of the Criminal Investigation Unit, said he has discussed the discovery in Steuben with other state police officials in connection with missing coed Karen Levy.

[From the Burlington County Times, June 22, 1973]

LEVY CASE FIGURE HELD

SENECA FALLS, N.Y. (AP)—Seneca Falls Police Thursday were holding a man they said could be a suspect in the disappearance last November of Syracuse University coed Karen Levy of Cherry Hill, N.J.

But Syracuse Police said Thursday the man, William D. King, 28, of Auburn, was questioned and determined not to be a suspect several months ago by state police investigating the girl's case.

Seneca Falls Police Chief Anthony J. Casamassima said King was arrested June 1 in connection with two reported rape cases in Seneca Falls. King also is wanted by Auburn Police in a third rape case in that city.

Casamassima said King closely resembles a composite picture of "Bill Lacey," the man who was last seen with Miss Levy before she disappeared. He said police determined King resembled "Lacey" after seeing the composite picture in a reward offer notice in a Syracuse newspaper last week.

Miss Levy, 18, was last seen about 6 p.m. Nov. 10 at the Upstate Medical Center in Syracuse where she met a man who identified himself as "Bill Lacey" and who offered her a ride to Monmouth State College, New Jersey.

The girl's parents have offered a $5,000 reward for any information leading to the whereabouts of their daughter.

King is being held in lieu of $25,000 bail in the Seneca County Jail at Waterloo.

[From the Courier-Post, Camden, N.J., Nov. 15, 1972]

Search Is Widened for Missing Coed

Two local private detectives have been hired by a Cherry Hill couple to investigate the disappearance of their 18-year-old daughter, a freshman at Syracuse University who has been missing since Friday.

The girl, Karen M. Levy, reportedly accepted a ride with a stranger who offered to drive her from Syracuse to Monmouth College in West Long Branch for a weekend visit. She never arrived.

Her parents, Mr. and Mrs. Bertram E. Levy, of 507 Tea Rose Lane, say they fear foul play. Mrs. Levy described her daughter as "trusting, bubbly, and the big sister type" who, because she had both a younger and older brother, "was used to having men around," Mrs. Levy said this morning that she feared her daughter was too trusting.

Syracuse police, New York and New Jersey state police, and Cherry Hill police are conducting a "missing persons" investigation.

SEEN FRIDAY NIGHT

Mrs. Levy said that the investigators who questioned Miss Levy's college roommate at Syracuse said that she accepted a ride with a man who identified himself as "Bill Lacey."

The man, who told Miss Levy he made regular business trips between Syracuse and Livingston, N.J., and was not connected with the university, apparently responded to requests she placed on campus bulletin boards for a ride.

Investigators, whose names are being withheld by the Levys, said that Karen was last seen walking with the man on a parking lot near the campus Friday night.

A Federal Bureau of Investigation spokesman indicated that the FBI is following the case to determine if a violation of federal laws has occurred.

CHERRY HILL GRAD

Karen, who was a home economics freshman, graduated from Cherry Hill High School East earlier this year. She was a member of the yearbook staff there and served as an officer of the United Synagogue Youth at Temple Beth Sholom in Haddon Heights.

Her father, an automotive parts store manager, has said he fears his daughter has been kidnaped but Mrs. Levy said this morning that they have had no word concerning their daughter since her disappearance.

Miss Levy was reportedly traveling to Monmouth College to visit her boyfriend. The last time the Levys heard from their daughter was Thursday night when she called to tell them she had arranged for a ride there.

Miss Levy was the subject of a November, 1971, article in the Courier-Post describing her skills in cooking and sewing. Her family formerly resided in Haddon Township.

[From the Asbury Park Evening Press, Nov. 17, 1972]

Coed Says She Turned Down Ride

Syracuse, N.Y. (AP)—A Syracuse University coed reported to campus police yesterday that several weeks ago she had turned down a ride to Boston, Mass., offered by a "Bill Lacey"—the same name given by a man sought in the disappearance of another girl student.

The report was the latest firm development in the police search for Karen M. Levy, 18, of Cherry Hill, N.J., a freshman missing since last Friday night. Authorities have listed her officially as a "missing person" but have indicated strong fears that she was abducted.

Miss Levy drove off with the man after he responded to notices she had posted in several university buildings asking for a ride to Monmouth College, West Long Branch, N.J. She has not been heard from since.

State police throughout New York State and New Jersey were continuing to aid in the investigation, which is being led by members of the Syracuse Police Department's youth division.

Campus bulletin boards remained filled Thursday with notices requesting out-of-town rides.

Such a practice has been common for many years, "but this is the first time anything like this has happened," said Lt. William Reidy, youth division commander.

[From the Asbury Park Evening Press, Dec. 7, 1972]

Karen Levy's Parents Post Reward Fund

Syracuse, N.Y. (AP)—The parents of missing Syracuse University coed Karen Levy are offering a $2,500 reward for information leading to her whereabouts, Syracuse Police Chief Thomas J. Sardino said yesterday.

Sardino announced the reward offer by Mr. and Mrs. Bertram Levy of Cherry Hill, N.J., after he and other police officials conferred here with Dennis Gealer, a private investigator retained by the parents. Gealer was identified as a former Philadelphia police inspector.

Miss Levy, an 18-year-old freshman, has not been seen since Nov. 10.

Missing Girl's Father Says: "Uncertainty Eats Us Alive"

(By Chris Connell, Associated Press)

Friends and family describe Karen Levy as a girl gifted with what some might consider old-fashioned qualities. She was an excellent seamstress and cook, and she entered Syracuse University this fall planning to major in home economics.

Bill Lacey, on the other hand, sounded like a hippie when Karen spoke with him on the phone Nov. 9 about a ride she was seeking from Syracuse to West Long Branch, N.J., the next day. Lacey used words like "bummer" and other hip jargon, although he said he was a businessman who drove from Syracuse to Livingston, N.J., weekly.

So when the attractive brunette went to meet Lacey at 6 p.m. Friday night, Nov. 10, in front of Upstate Medical Center near the Syracuse campus, she brought along her roommate and the roommate's boyfriend to make sure he looked respectable.

Lacey had seen one of the ads Karen posted on school bulletin boards and in a weekly paper seeking a ride to Monmouth College in West Long Branch to visit a boy and two girl friends from high school in Cherry Hill, N.J.

The drive from Syracuse is 4½ hours, and West Long Branch is an hour further south of Livingston, but Lacey told her on the phone he'd gladly drive her the whole way. She wouldn't have to split expenses—he just wanted her to share the driving. And he told her to bring nothing but a knapsack, because the backseat of his small, company car was filled with goods. He was dropping some of the goods off at the hospital, he said.

Around 6:15 pm a young man with short brown hair came out the front door of the hospital. He was wearing a business suit with narrow lapels, and Karen's friends noticed there was a slight deformity—a droop—to his left eye He approached the three youths and asked "Is one of you Karen Levy?"

Karen, surprised at the man's neatness, said she was. He said his car was parked behind the hospital. Karen told her friends she guessed everything was all right, and they left her.

No one has seen Karen since.

"Bill Lacey" was not delivering anything to the hospital. Police have found no trace of the six-foot man with a droop in his left eye.

But two Syracuse coeds who advertised for rides prior to Nov. 10 said they had been contacted by a "Bill Lacey." He told one girl who wanted to go to Philadelphia he drove there weekly on business, and he told the other he drove to Boston weekly on business.

When the first girl said her plans had changed and asked for his phone number, he hung up. And when the second said she had a friend who wanted to come along, he said he was leaving sooner than expected and hung up.

Karen's parents, Bertram and Sylvia Levy of Cherry Hill, say their daughter was the victim of "an obvious abduction." Because there has been no ransom demand, and no trace found of Karen or her belongings, she is listed as a missing person.

But in the 24 days since her disappearance Syracuse and New York State Police have mounted an intensive search for her. Officials say they are now "grasping at straws."

Karen's mother tearfully admits her hopes are ebbing day by day. "We're looking for miracles now," she says.

"You think you have problems until something like this comes along. It changes your whole life, your whole values,' adds Bertram Levy quietly.

"The uncertainty and the not knowing are just eating us alive."

[From Courier-Post, June 16, 1973]

MISSING CHERRY HILL COED: BILL FILED TO ALLOW FBI TO HUNT GIRL

(By Carol R. Richards, Gannett News Service)

WASHINGTON.—Legislation to give the Federal Bureau of Investigation jurisdiction in the case of a Cherry Hill, N.J., coed who disappeared from Syracuse University last November was filed Friday by Rep. Edward B. Forsythe, R-N.J.

The FBI has refused to investigate the disappearance of 18-year-old Karen Levy because there is no evidence that she was kidnapped or that she was carried across state lines, and thus no assurance that a federal law has been violated.

Forsythe's bill would clarify the federal kidnaping law to create a presumption of violation if a person who has agreed to go somewhere with someone fails to turn up after a reasonable period of time.

POSTED REQUEST

Miss Levy last November posted a request for a ride to West Long Branch, N.J., on a Syracuse campus bulletin board. The freshman drove off with the clean-cut young man who responded to her request, and hasn't been heard from since.

Her parents, Mr. and Mrs. Bertram Levy, have offered a $20,000 reward for her safe return, and have hired private investigators.

A spokesman said Forsythe has written to President Nixon and the FBI asking for FBI intervention. Former presidential counsel John W. Dean III replied for the President, saying that FBI jurisdiction covers only cases where federal law has been violated. A similar reply came from William D. Ruckelshaus, acting director of the FBI.

LEGAL PRECEDENTS

Forsythe then asked the Library of Congress' legal division to provide information about legal precedents, and was told the FBI probably does have authority to intervene but new legislation would be desirable to clarify the authority. As a result, Forsythe drew up and submitted clarifying legislation.

The case is now being investigated by police agencies in Syracuse. Miss Levy wanted to go to Long Branch to visit her boyfriend, Bill Lieberman, a student at Monmouth College.

[From Asbury Park Evening Press, Mar. 14, 1974]

FEW SOUND LEADS DEVELOP FROM STORY ON MISSING COED

SYRACUSE, N.Y. (AP)—A detective story magazine article has raised some new wrinkles but few sound leads in the case of a Syracuse University coed missing since November 1972.

The April edition of "Official Detective Stories" includes an eight-page article on the disappearance of Karen Levy, a 19-year-old Syracuse University freshman from Cherry Hill Township, N.J.

Miss Levy last was seen near the Syracuse campus the evening of Nov. 10, 1972, with a young man who identified himself as "Bill Lacey."

"Lacey," a short-haired man dressed in a gray business suit, had responded to a ride request to West Long Branch, N.J., that Karen had posted on campus bulletin boards.

The two met in front of the Upstate Medical Center about a block from the campus and drove off together, Karen to visit her boyfriend at Monmouth College, and "Lacey" reportedly to handle business elsewhere in New Jersey. Neither Karen nor the man has been seen or heard from.

The magazine article, titled "Mysterious Fate of Missing Syracuse Coed," has produced a new batch of letters and telephone calls in the past 10 days from persons who claim to have information that could lead to the whereabouts of Miss Levy, according to Lt. William Reidy of the Syracuse Police Department.

As commander of the department's Youth Division, Reidy has headed search efforts by law enforcement agencies throughout the Northeast.

"We've had a flurry of letters and some calls from persons who have seen the article and think they're detectives overnight and have all the answers for us," Reidy said yesterday. "But, admittedly, we've had nothing much we can follow up on."

"The article is pretty accurate and well-documented and has stirred up a little more interest, but I think the people who read that type of magazine are different from those who read the newspapers," he said.

Reidy said his office has checked without success several leads from individuals who said they read the article.

[Editorial, Camden Courier-Post, Mar. 11, 1974]

THE KAREN LEVY CASE

When a young woman accepts a ride with a stranger in another state, and then does not appear at her destination within a reasonable period of time, there is ground for suspicion of foul play, and the incident should be fully investigated. It is for this reason that we have such agencies as the Federal Bureau of Investigation.

Yet the FBI was derelict, as the subcommittee on crime of the House of Representatives suggested the other day, in the case of Karen Levy. Miss Levy, of Cherry Hill, disappeared a year ago last November after having accepted a ride with a stranger who agreed to take her from Syracuse to West Long Branch. She was a student at Syracuse University at the time.

The FBI has never entered the case. In its defense, it adduces the fact that Miss Levy accepted the stranger's offer voluntarily. There was no reason, spokesmen told the committee, to believe initially that she had been abducted.

But as Rep. William Cohen, R-Maine, said in response to that lame attempt at justification, it is most difficult to support such a conclusion when Miss Levy's background is taken into consideration. She was a girl not known to have family or college problems. She solicited the ride, she expressed skepticism about the man who offered it, and then she never reached her destination.

It is hard to understand how so vigilant an agency as the FBI could have ignored a case like that.

The problem, evidently, is the legal determination of how much time should elapse before a missing person must be considered kidnaped.

Rep. Edwin B. Forsythe, R-N.J., has introduced a bill that would authorize intervention by the FBI in a case in which someone accepted a ride and then failed to reach his destination within a "reasonable" time. It would seem appropriate and worthy of passage.

But that is for the future. For the present, belated though the initiative would be, the FBI should try its best to find out what happened to Karen Levy. And it should never be guilty of such a flagrant lapse again.

[From Courier-Post, Nov. 14, 1973]

KAREN LEVY'S PARENTS AND POLICE HAVE NEVER GIVEN UP HOPE

(By Fabia Mahoney, Courier-Post Staff)

The search for Karen Levy goes on.

It continues in the thick files of New Jersey and New York police departments, in the Beth Shalom Synagogue in Haddon Heights and in the Levy home at 507 Tea Rose Lane, Cherry Hill.

Karen's parents, Bertram and Sylvia Levy, have not given up hope that they will find their daughter someday.

Karen, then 18 and a freshman at Syracuse University disappeared Nov. 10, 1972 after accepting a ride to New Jersey from a blond, cleancut young man identified only as "Bill Lacey."

She was on her way to visit friends at Monmouth College in West Long Branch and had advertised for a ride on the campus bulletin board.

She has not been seen or heard from since that Friday night more than a year ago.

NO LEADS

When contacted this week, investigators from New Jersey and the New York state police, Syracuse police and Camden County detective division reported "no leads."

Police in both states have questioned hundreds of potential suspects but have turned up nothing.

The Committee to Find Karen Levy, headed by Rabbi Albert L. Lewis of Beth Shalom, is still in existence, but is not as active as it once was.

Legislation to give the Federal Bureau of Investigation jurisdiction in the case of the missing girl lies dormant in a subcommittee of the House Judiciary Committee. The bill was filed in June by U.S. Rep. Edwin B. Forsythe, R-N.J.

"Realistically, I don't think my daughter is alive, but I certainly haven't given up hope," Sylvia Levy in the comfortable living room of her home in the Woodcrest section of the township, "It's like waiting for the other shoe to drop. We're reasonable enough to know what the odds are (against finding Karen alive) but desperate enough not to give up."

Mrs. Levy, a petite, reddish-haired woman, appeared tired and drawn. She said the tragedy touched "every facet of our lives."

"We live from day to day," Bertram Levy, a Pennsauken auto parts businessman said wearily.

BELIEVES ALIVE

Levy a soft-spoken man with thinning, black hair, said he disagrees with his wife on the odds against finding Karen. "I still think my daughter is alive. Don't ask me how or why but it's the only hope that keeps me going."

The Levy's current project is trying to persuade voters to write to Rep. Peter Rodino of New Jersey, chairman of the House Judiciary Committee and to Rep. John Conyers Jr. of Michigan, chairman of the subcommittee on crime where Forsythe's legislation is filed.

The Levys want pressure brought on the two lawmakers to take action on the bill. The proposed legislation would clarify the federal kidnapping law to create a presumption of violation if a person who has agreed to go somewhere with someone fails to turn up after a reasonable amount of time.

So far, the FBI has declined to take jurisdiction over the case, saying that there is no proof that Karen was transported over state lines.

FBI COOPERATION

Lt. William Reidy of the Syracuse police said local FBI agents cooperate with his department, checking out suspected persons in their own communities and forwarding the information to the college town.

Reidy said his department has interviewed more than 700 people "from Canada to Hawaii" during the past year but has turned up no clues.

While the department once had 50 men assigned to the Levy case, they now have only one investigator who is assigned to all missing persons inquiries.

The police maintain a three-inch thick folder on the dark-haired, dark-eyed coed. Reidy said he receives two or three calls a month from people who think they saw someone who resembles the composite drawing of "Bill Lacey."

RAISE REWARD

The Levys still employ a private investigator and still offer a $20,000 reward for Karen's safe return. The reward money was upped from the original amount of $2,500. "Oh, I would love to pay that," Mrs. Levy said of the reward.

"We don't want the man (Karen's apparent abductor)," she said. "We're not looking for revenge. We're looking for a daughter."

Both the Levys and the Syracuse police have received dozens of calls and letters from people identifying themselves as "psychics" or "mystics" who believe they know what happened to Karen or where she was taken.

"If they give us information on a particular spot, we'll check it out," Reidy said.

Karen's mother said she went on a search mission with one psychic but the journey turned up nothing.

She is more interested in a report about a teenage girl, not considered a runaway, who has been missing from Syracuse since the summer. Mrs. Levy is wondering if there is any connection between the two cases.

Rabbi Lewis said his committee has given up mailing letters to government officials in Washington but it still "stands ready to be of assistance."

"I'm a realist," the rabbi said. "The religious man in me says have faith, that she may yet be found, but the pragmatic man in me says, let's accept a reality."

Mrs. Levy said her family, which includes a son in high school and another son at college, has its "ups and downs, but more downs than ups."

She has tried to resume volunteer activities but finds it difficult to perform "rationally" every day. But, still, "sitting in the house brooding is the worst thing so I get out as much as I can."

She is also struck by the offers of help that have poured in from all over the country.

"There are so many concerned, compassionate people who don't even know Karen," she said, shaking her head.

Karen Levy's birthday was Oct. 28. She was 19 years old.

"The community has not forgotten," a secretary of Beth Shalom said simply.

[From the Evening Times, Dec. 16, 1973]

MISSING COED'S PARENTS PLEAD FOR FBI TO HELP

Sir: More than a year ago, our daughter Karen Levy accepted a ride from her college campus in Syracuse, N.Y., to visit former Cherry Hill classmates at Monmouth College. Two of her friends had birthdays that week and she made special plans to see them.

Many students depend for transportation on what is called a "ride board" on which they list requests for rides, often stating they will share driving chores or expenses. These ride boards are provided for this use by the college.

Karen accepted a ride with a man purporting to be a businessman traveling from Syracuse to North Jersey. Perhaps it was because of her upbringing that she trusted someone who dressed in business clothing—someone who gave the impression of being a "solid citizen."

Karen's friends waited for her but she never came. She has not been heard from since she trusted a man who offered to take her from New York to New Jersey—across state lines.

Day after day, we, her parents, have faced a blockade of rules and regulations that forbid the FBI from officially entering the case and have been held to the efforts of local police forces that have no jurisdiction outside the Syracuse area. The very best intentions and investigations of congressmen and law officers have been in vain because the federal help needed is not legally or officially available.

Because of this, we hired our own private detective at a cost that was staggering; but if it were your child, would you do less? We often think about people who have been through similar situations, who perhaps could not raise enough to hire a detective for even one day, much less months.

How many similar cases have you read or heard about during the past 12 months? How many parents rushed to Houston in hopes of finding their child amidst a sinister massacre?

Because of this, we are urging people to place public pressure on our representatives to help get passage of HR 8722, introduced in June 1973, by Rep. Edwin Forsythe of New Jersey. This bill would allow nationwide investigations into cases of missing persons who are not typical runaways that have left home by choice. The purpose is to "clarify the intent of the Congress by creating an assumption that a person who voluntarily agrees to travel with another to a particular destination, but does not arrive at such destination after a reasonable period of time, is inveigled or decoyed, within the meaning of the previously existing bill." The FBI would be able to bring its technology and expertise into a case that has led only to blind alleys for 13 months.

This bill is under the auspices of Rep. Peter Rodino, Jr. of Newark, chairman of the House Judiciary Committee, and Rep. John Conyers Jr. of Detroit, chairman of the Subcommittee on Crime of the House Judiciary Committee. Please help us. Please write to these men at House of Representatives, Washington, D.C. 20515, urging them to insure passage of HR 8722.

Mr. and Mrs. BERTRAM LEVY,
Cherry Hill.

[From the Washington Post, Mar. 3, 1974]

RUNAWAY STATISTICS

(By Judy Bachrach)

They look, really, like the most unexceptional of couples. They are both small people, people who dress in brown. Her taste runs to brown hounds-tooth-checked jackets and brown pants; his to brown suits with wide lapels.

But on Nov. 10 1972, something most exceptional happened to these people. Their 18-year-old daughter, a freshman at Syracuse named Karen Levy, disappeared.

And no one has ever seen or heard from her again.

Sylvia Levy, who does most of the talking, thinks her daughter is dead.

"Yes, I do," she says, nodding her head vigorously. "But my husband"—she points to a waxen-faced man with dull eyes—"He thinks she's still alive."

"I have to think Karen's still alive," says Bertram Levy flatly, "It's the only thing that keeps me going."

Then he lapses into the silence from which he rarely emerges.

In the fall of 1972, Karen Levy wanted to travel from Syracuse to Monmouth College in New Jersey to visit her boyfriend (who has having his birthday) and two of her girl friends. She put a notice on the Ride Board of her dormitory to this effect, and sure enough, a few days later, the detachable tab with her name and phone number was missing from her notice.

A man named Bill Lacey phoned her, said he was a salesman who journeyed regularly between Syracuse and New Jersey, and offered her a ride. Karen was a little apprehensive about accepting a ride from a nonstudent, and asked two friends to accompany her to meet the man on the appointed day.

The two friends complied.

"They described him later as a neat looking man," says Bertram Levy. "Well-dressed. Not a beatnik. Not a hippie in dungarees. Karen would never have accepted a ride with one of those."

But Mrs. Levy shakes her head. "Oh maybe she would have. We don't know—we just don't know."

Karen left with this young man. Five hours later, when she didn't arrive at Monmouth College, her boyfriend called her dormitory. Then he phoned the police. Karen's parents, who were out, weren't informed until the following evening that their daughter was missing. Then they called the police—the Syracuse police, the New York State Police, the New Jersey State Police, the campus cops.

Mrs. Levy smiles grimly. "And everywhere there was this lack of concern. The New York State Police—they told us thousands of missing persons calls come in a day and they feed the statistics into a computer in Washington."

At 2 that morning, Mrs. Levy called the FBI. The FBI told her to send a photo of their child and some information. It was one of the few bits of assistance the FBI was to provide for the Levys in the 16 months their daughter has been missing. They did check out some out-of-state leads; they did offer the Syracuse police their facilities to track down the girl.

"The FBI told us," said Mrs. Levy, "That since there was no evidence Karen crossed state lines—even though that was her intention—and there was also no evidence that she had been forcibly abducted, there was nothing they could do."

When the Levys hired two detectives, one Syracuse policeman told the detective that, yes, he remembered Karen was a girl who went South. "Isn't that what they all do?" said the policeman, "Go south for the winter?"

It took the police a while, but seven days after Karen Levy disappeared, they did dust the little sign she had put on the Ride Board for fingerprints. From then on they pursued the case as vigorously as they could, but with no tangible results.

Sylvia Levy feels she can explain the delay in police action to find her daughter.

"You see the attitude of the authorities is: if you're young and you disappear, you ran off. They besmirch the kids as a group." She bobs her tightly coiffed auburn hair up and down. "And the moral of this story is—Don't be young."

Alive or dead, Karen Levy is a statistic. She has very little in common with Patricia Hearst, for example. There was evidence that Miss Hearst was forcibly abducted and her parents received ransom messages. And, unlike Miss Hearst, Karen Levy did not come from prominent parents, parents who had easy access to the media. Karen Levy has far more in common with those 27 boys in Texas, most of whom were written off as runaways, until their bodies were found.

About one million runaway-youth cases are reported each year. Most of them are female. Most turn up by the end of 48 hours. The police and the FBI are used to these kinds of cases, inured to them perhaps. And they know the reasons why so many are missing: because they ran away from home after a fight; because they wanted to go South for the winter; because an unexpected trip is—well—A Trip.

"We were very close to Karen," says Mrs. Levy. "And she was especially close to her (older and younger) brothers. She was the liaison between the two."

Sylvia Levy turns with a teasing grin to her 16-year-old son, Rick. But he, like his father, sits in the hotel room, immobile, feeling no urge to respond to his mother's mild taunt.

"She crocheted a prayer shawl for Rick right before she disappeared," Mrs. Levy adds brightly. "Karen was always very creative. Good at cooking, sewing. Not a great student."

Bertram Levy stirs himself briefly, "She enrolled in home economics at Syracuse," he says. "So you can imagine what kind of girl she was." He pauses and lowers his balding head to study the dark rug on the floor. "And there were some who felt she was very pretty. And that's how I felt too."

Over 11,000 pieces of mail were sent to President Nixon begging for FBI intervention in the Karen Levy case. One of them came from the office of Rep. Edwin Forsythe (R-N.J.). He received in reply, a polite letter from then White House counsel, John Dean, explaining that the FBI couldn't intervene in this matter.

The Levys posted rewards ranging from $2,500 to $25,000 for information leading to the return of their daughter. They hired a series of detectives, but will not reveal how much they paid them.

"It's like this," Mrs. Levy explains with a wry grin, "The moment you say how much money you spent, people think you're rich, and you get all these crazy calls."

And are they rich?

Mrs. Levy erupts in a snort. "No."

They live in Cherry Hill, N.J., and her husband, who is 46, is a distributor of automobile parts.

When asked what she does, Mrs. Levy smiles and replies, "I lead the campaign."

In the beginning, Sylvia Levy sent telegrams about her daughter to a lot of major national publications. She has spoken to newspapers, TV reporters. In late 1973, she appeared on the Mike Douglas show, and Wednesday morning she appeared before the House Judiciary Subcommittee on Crime to lend support to Rep. Forsythe's bill. Forsythe's bill would authorize the FBI to investigate in cases where a person voluntarily accepts transportation to a destination across state lines and does not arrive "in a reasonable period of time."

Sylvia Levy is asked why she is going through this peculiar kind of hell if she honestly believes her daughter is dead.

Mrs. Levy is prepared for this question. She undoubtedly answered it hundreds of times before.

"I'm doing this," she replies firmly, "So that no other parent ever again has to go through this kind of thing unnecessarily."

She shrugs and smiles bleakly. "But let's face it. Whatever we do now, it's too late to help Karen Levy."

Mrs. Levy is the kind of woman who prides herself on being realistic.

The room in which the congressional subcommittee held its hearings was packed with a mostly middle-aged audience. They clapped when Rep. William S. Cohen (R.-Maine) who is on the subcommittee, raked the FBI representative over the coals for his agency's failing to intervene in the Karen Levy case. They snickered when the FBI man complained that the proposed bill would involve his agency in too many cases.

They had mostly come because they were friends of the Levys and they wanted to see how the congressmen would react to the case of their friends' daughter.

Many of the congressmen expressed their sympathy for the plight of Mr. and Mrs. Levy. Many said they felt the FBI had acted wrongly, and something should be done about it. An aide to Forsythe, watching their reaction, said he felt "encouraged" that his bill would pass the subcommittee within about three weeks.

They listened as Mrs. Levy read a statement into the record. In the beginning her voice quivered, but then it grew stronger as she neared the end:

"It is not possible for us to rest until we can bury our child. It is not possible for us to rest until we can bury the cynicism and callousness which deprive our children of the benefit of the doubt so that a case of a missing child will never again be put on the back burner. . . ."

One man in an ill-fitting grey suit, the pocket of which contained a walking guide to Washington, smiled and nodded at this.

But Bertram Levy just stared straight ahead into space, his waxen face expressionless.

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