

**TESTIMONY OF TOM SYLVESTER  
PARENT OF ABDUCTED CHILD, CARINA SYLVESTER**

**TOM LANTOS HUMAN RIGHTS COMMISSION  
December 2, 2009**

Thank you, Mr. Chairman for inviting me to testify today on this very important issue.

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child who was taken by her Austrian mother from the United States to Austria on October 30, 1995. That was Carina's last day on American soil. She was then 13 months old. She is now 15 years old and remains in Austria. In the intervening 14 years, I have seen her just 75 days, only in Austria, and always under the supervision of a third-party or the mother.

Many years have passed since those early days but my passion to know my daughter and to be a parent to her has remained steadfast. Over the years, I sought and obtained diplomatic assistance, pursued a criminal remedy, testified before Congress, met with members of Congress, met with successive Secretaries of State, and addressed my case to President George W. Bush. I have litigated in the Austrian court of first instance, the Austrian appellate court, the Austrian supreme court, the Michigan circuit court and the European Court of Human Rights. I have had successful judgments in each and every court in which I have litigated. I have been the beneficiary of a host of orders directing my ex-wife to either return my daughter to the U.S. or produce her for visitation in Austria. None of these orders were enforced. I have obtained two human rights judgments against the Republic of Austria requiring them to take all affirmative and necessary measures to repair the relationship between my daughter and me. Even these, sadly, appear to be unenforceable. For the past 14 years I have lived in a world where right is wrong and wrong is right. A world where victory but not justice is attainable in the courts. And, somewhere in a place far, far away, stands my daughter, who has grown up deprived of the love and care of a father who adores her.

My saga began with the filing of a Hague Convention case in Graz, Austria. The Austrian trial court issued a prompt favorable order that Carina be returned to her home

in the United States. This decision was affirmed by the Austrian Supreme Court. However, when the abductor refused to comply with the court order, the Austrian legal system provided no effective mechanism to compel her compliance. The one and only attempt at enforcement failed. In the end it was merely a knock on the door and a request for the child.

Time passed. Austrian legal procedure called for stays of proceedings while any matter before the court was on appeal. The mother's legal team maneuvered to flood the court with frivolous motions, the appeals of which led to years of delay of any further possible enforcement of the return order. The delay itself created a change in circumstances, namely that my daughter was now well-settled into the local environment and that it would be traumatic to send her back to the United States. Thus, several years after the abduction and initial order, the Austrian court determined it would not enforce its own "valid and final" order to return Carina home. This situation is best described with circular logic: *The child was not returned because the order was not enforced; now the order will not be enforced because the child was not returned.* The Austrian court proceeded to grant the mother custody in contravention of an existing Michigan custody order to the contrary.

Gaining access to my daughter under these circumstances has been a nightmare. When it was ordered by the court at Christmas 1995, the mother did not comply and no enforcement mechanisms were available to me. As a result, I did not see my daughter from the time of her abduction in October 1995 until 1997 when I was granted one-hour visits with my daughter on three successive days in June and December of that year at the Institute for Learning in Graz, supervised by its Director. Throughout all of 1998, I made requests for access to my daughter through the Austrian court and none was granted. Late in 1999, I negotiated directly with the mother and agreed to pay her a monthly stipend in exchange for visits supervised by her in her home. This is the period I dubbed "pay per view." Under these terms, I was able to obtain three visits with my daughter at the end of that year, each time from approximately 6:00 to 9:00 pm on Friday night and from 10 am to 7 pm on Saturday and Sunday. Never could I leave the mother's house with Carina alone. The mother even held my car keys during the visits.

Quarterly visits under these same terms continued in 2000 and throughout 2004 with some variations due to the events of September 11. When in 2004 I asked the mother for more time with Carina she declined and threatened that if I went through the courts one more time, "You'll see, you will get nothing." I was given one more voluntary quarterly visit with Carina in early 2005 and filed an access request with the court thereafter. The Austrian courts did indeed follow through on her threat. The hearing on my request took place in July 2005. The judge ordered a "trial" visit to be overseen by a child psychologist who would provide a report to the judge on how the visit went. For the first time in nearly 10 years, Carina behaved very badly with me, creating chaos for the child psychologist to see. No visits were ordered as a result of the report. In 2006, I asked Carina if I could come to visit at Christmas and I was allowed to see her for the three-day weekend along the lines of the quarterly schedule. I have continued to ask Carina for further opportunities to visit her, but have not been welcome to do so.

My daughter has never been alone with me and has never met her American relatives. I have not seen my daughter since December 31, 2006, coming up now on a full three years.

During the protracted litigation that followed my favorable Hague decision, I availed myself of the remedies available from the European Court of Human Rights, known as the ECHR, an independent, international tribunal which acts as the enforcement arm of the European Convention on Human Rights. In the late 1990s, I filed two cases against the Republic of Austria in the ECHR. The first was based on the court's failure to enforce the valid and final return order from 1995 violating my daughter's and my Article 8 right to a private family life free from unwarranted interference by the state. The second was based on the years of time that had passed during the stay of proceedings while the frivolous motions were appealed, ultimately violating our right under Article 2 to a speedy trial on the issue of the enforcement of the return order. Carina and I together won favorable judgments against Austria in both cases in 2003 and 2005 respectively.

Judgments of the ECHR, like the decisions of the US Supreme Court, become the supreme law of the land. These judgments, known as *Sylvester v Austria I and II*, copies of which are available here today, mandated affirmative responsibilities on the

part of the government of Austria 1) to pay of a modest money judgment; 2) to undertake general measures to ensure that a violation such as mine would not occur again within their legal system; and 3) to undertake individual measures to repair the torn relationship between my daughter and me. The Committee of Ministers of the ECHR Department of Execution of Judgments oversees the "execution" or enforcement of the *Sylvester v Austria* judgments in Strasbourg, France.

Despite the clear mandate of *Sylvester v Austria I*, now the supreme law of Austria, that the Austrian government utilize all reasonable measures to reunite father and child, the Austrian government has taken no step whatsoever to achieve that goal. Instead, the government has unwaveringly held the position that they could do nothing, informing the Department of Executions that it was up to me to initiate a motion in the Austrian court "if I *wanted* to have access to my daughter." Despite travel to Strasbourg to speak to the Directors of the Department of Execution of Judgments, repeated lengthy submissions concerning the futility of my going again into the very same court which had either failed to order access or failed to enforce its own orders, and seeking diplomatic and Congressional assistance, I could make no headway whatsoever to convince them that it was Austria, not I who bore the responsibility to provide restitution by restoring the family relationship between my daughter and me. As an act of desperation, I acquiesced to the pressure and opened a case in Austria for post-*Sylvester v Austria I* access to my daughter. This occurred in July of 2005 when the disastrous "trial" visitation took place. The judge in the case at the outset made it clear in an open courtroom in which my daughter sat that she did not appreciate my involving what she called "international authorities" in "her" case and that I would not see Carina if Carina herself did not desire it.

Carina used the opportunity to lash out at me declaring boldly by both word and deed that she did not want to see me. The mother had made good on her promise that "I would get nothing." With the exception of the following Christmas, I have been cut off from seeing Carina ever since. I can get no relief from the court on access even after *Sylvester v Austria I*, the supreme law of their land, and my requests of Carina to visit have been unsuccessful since 2006.

And now, another blow is on the horizon. As we speak, the Department for the Execution of Judgments of the European Court of Human Rights is set to close the case on the execution of *Sylvester v Austria I* as to individual measures, finding that the government of Austria has *fulfilled* its affirmative obligation to mend the relationship between my daughter and me. The current meeting of the Committee of Ministers which determines compliance with the ECHR judgments is meeting in Strasbourg December 1 through 3. The Austrian government has moved to close the matter as I have informed them that I will not continue any further litigation in the Austrian court on access. Such a move is read as an adversarial measure by mother and daughter, is in fact harmful to my relationship with my daughter, further violates our right to a private family life and has yielded significantly less time with my daughter than did the "pay per view" method. At the end of the day, the Human Rights judgments can apparently be tossed on the pile with all the other orders of the various courts which will not be enforced.

I sit here before you, a man who has won not only his Hague Convention case, but also two prized Human Rights judgments against Austria for its failure to timely enforce the Hague Convention return order, and yet I cannot and do not even see my daughter. After 14 years, I am no closer to her than I was in the months that followed her abduction in her infancy.

International parental child abduction is indeed a Human Rights issue. There is nothing more fundamental than the right of a parent to a normal relationship with his or her child. When that right is interfered with by the state, there must be some effective recourse. I have taken every legal step available and have won every major decision except the one that made the difference--the decision not to enforce the order that Carina be immediately returned to the US. US citizens are often helpless in foreign courts with systems wholly unlike our own. I ask that you apply pressure on these recalcitrant governments to come into compliance with the international requirements of the Hague Convention in mandating enforcement of return orders.

My attempts to maintain a life with my daughter began in 1995 and continue to this day, although I now know there is little hope of seeing her again until adulthood, if

then. Although mine is an extreme case, as you see from the testimony today, it is not an isolated case. Left-behind American parents need Congress' help.

I want to thank the Tom Lantos Human Rights Commission for holding a hearing on this very important subject, and for listening to my story.